

REPORT AND RECOMMENDATIONS OF THE ADVISORY COMMISSION ON THE UNIFORM BAR EXAMINATION



November 18, 2016

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Executive Summary

The Maine Supreme Judicial Court created the Advisory Commission on the Uniform Bar Examination in June 2016 to study the merits of adopting the Uniform Bar Examination (UBE) as a replacement for the current bar examination. The UBE is a uniform bar licensure examination prepared by the National Conference of Bar Examiners (NCBE) but administered by local jurisdictions. It is currently administered by 25 jurisdictions, including nearly all the northeast states, and its adoption has been encouraged by the American Bar Association (ABA) and the Conference of Chief Justices.

The Maine Bar Admissions Process

An individual may be admitted to the Maine bar in one of three ways: the bar examination, the modified bar examination, or admission by motion. Regardless of the avenue for admission, each applicant to the bar must also attain a passing grade on the Multistate Professional Responsibility Examination and produce evidence that he or she is of good character and fitness to practice law.

The Maine bar examination is a two-day examination comprised of six essay questions drafted by the Maine Board of Bar Examiners (MBBE), one Multistate Performance Test (MPT), and the Multistate Bar Examination (MBE). The first two essay questions test on the Maine

rules of court, evidence, and professional conduct. The topics for the remaining four essay questions are chosen from a list of 19 subjects identified in the Maine Bar Admission Rules. The MPT is a practical task drafted by NCBE that tests whether an individual possesses the fundamental lawyering skills necessary to complete a task that a beginning lawyer should be able to accomplish. The MBE is a multiple-choice examination drafted by NCBE designed to assess an applicant's ability to apply fundamental legal principles and legal reasoning in analyzing fact patterns.

The modified bar examination consists of only the MBBE-drafted essays and the MPT. It is available to applicants who have engaged in the active practice of law for three of the last five years or have taken the MBE in the prior 61 months. Those applicants who previously achieved an MBE score of 155 or higher may choose to take only the first two essay questions, which test on Maine's rules of civil, criminal, and appellate procedure, evidence, and professional conduct.

Admission by motion is available to applicants admitted in other U.S. jurisdictions with reciprocity with Maine and who have been engaged in the active practice of law for five of the preceding seven years. Those applicants already admitted in New Hampshire or Vermont may be

admitted by motion if they have been engaged in the active practice of law for the immediately preceding three years.

The Uniform Bar Examination

The UBE is a uniformly administered, graded, and scored bar licensure examination comprised of the Multistate Essay Examination (MEE), two MPTs, and the MBE. The MEE consists of six 30-minute essay questions that are drafted by the NCBE but graded by the individual jurisdictions pursuant to generally applicable principles of law. The Maine bar examination currently administers one MPT and the MBE, so the primary change to Maine's bar examination in adopting the UBE is the administration of the MEE rather than utilizing MBBE-drafted essays.

The UBE provides a portable score that may be used to apply for admission in other UBE jurisdictions. Each jurisdiction may determine its own period for acceptance of UBE scores earned elsewhere. Further, UBE jurisdictions continue to control other aspects of the bar admissions process such as the underlying educational requirements, passing score, testing accommodations, and character and fitness.

The Commission's Recommendations

The Commission's work included research and study, solicitation of public comment, consideration of presentations by the MBBE and NCBE,

and direct contact with other UBE jurisdictions. After nearly six months of consideration, the Commission recommends that the Court adopt the UBE effective for the July 2017 bar examination. The Commission concludes that the UBE may provide a more reliable and valid assessment of an individual's competence to practice law than the current Maine bar examination. Importantly, its adoption would benefit the entire State of Maine by recognizing and capitalizing on the realities of a mobile society.

The benefits derived from the UBE are not limited to law students and law firms. Like the rest of the State's population, Maine's bar is aging. The lack of attorneys in rural areas combined with an aging bar will compound the access to justice problem that already exists across the State. The Commission is optimistic that removing unnecessary barriers to bar admissions and embracing the UBE's portability provisions may encourage a younger, more diverse population of attorneys to relocate to the State, which will in turn benefit the public by increasing legal resources in underserved areas.

A majority of the Commission concludes that the addition of a pre-admission, state-specific bar exam component presents an unnecessary hurdle to admission that does not further the protective purpose of the bar examination. However, in the event that the Court

deems it advisable to include a jurisdiction-specific component, the Commission is unanimous in supporting a post-admission continuing legal education (CLE) requirement that may be achieved by amending the Maine Bar Rules to require that attorneys take CLE specifically on Maine law during their first year of practice.

The Commission's specific recommendations are as follows:

- (1) Adopt the UBE, effective for the July 2017 bar exam administration, with a passing score of 276 points out of 400;
- (2) Discontinue administration of the modified bar examination, effective for the July 2017 bar exam administration;
- (3) Accept transferred UBE scores for a period of three years after the applicant takes the UBE upon payment of the same fee associated with admission by motion;
- (4) Amend the Maine Bar Admission Rules to permit reciprocal admission of attorneys who have been in the active practice of law for three of the immediately preceding five years, consistent with the ABA Model Rule for Admission by Motion;
- (5) Encourage the MBBE to maintain a close, continuing relationship with the Council of Bar Admission Administrators' Committee on the UBE; and
- (6) Task the MBBE with monitoring research and reports addressing the impact of the UBE on different sub-groups, including racial minorities and genders.

REPORT AND RECOMMENDATIONS OF THE MAINE ADVISORY COMMISSION ON THE UNIFORM BAR EXAMINATION

I. Introduction

The Uniform Bar Examination (UBE) is a uniformly administered, graded, and scored bar examination developed by the National Conference of Bar Examiners (NCBE)¹ that yields a portable score that may be used to apply for admission in other UBE jurisdictions. The examination is presently in its fifth successful year and has been adopted by 26 jurisdictions. Among those jurisdictions are nearly all of the northeast states, including Connecticut, Massachusetts, New Hampshire, New Jersey, New York, and Vermont. Additionally, in February 2016, the American Bar Association (ABA) and the Conference of Chief Justices adopted resolutions encouraging bar admission authorities to adopt the UBE.

In June 2016, the Maine Supreme Judicial Court created the Advisory Commission on the Uniform Bar Examination to “consider the merits of adopting the UBE as a replacement for the current bar examination format so that Maine may benefit from the

¹ NCBE is a not-for-profit corporation whose mission includes assisting bar admission authorities by “providing standardized examinations of uniform and high quality for the testing of applicants for admission to the practice of law.” Nat’l Conference of Bar Exam’rs, *About NCBE*, <http://www.ncbex.org/about/> (last visited Nov. 12, 2016).

multijurisdictional benefits of the UBE and the portability of qualification for admission to the Maine bar.”² The Commission’s membership included representatives from the Maine Board of Bar Examiners (MBBE), Maine Association of Criminal Defense Lawyers, Maine Prosecutors Association, Office of the Maine Attorney General, Maine Commission on Indigent Legal Services (MCILS), Maine State Bar Association (MSBA), Maine Trial Lawyers Association, and the University of Maine School of Law.

The Commission is pleased to present this report to the Court, which represents the product of nearly six months of work. Parts II and III of the report provide an overview of the current Maine bar admissions process and the UBE. Part IV describes the Commission’s methodology from start to finish, including seeking public comment and dividing into subcommittees to ensure the Commission dedicated sufficient attention to all important areas of study. Finally, Parts V and VI discuss the issues upon which the Commission focused and the Commission’s ultimate recommendations.

II. The Maine Bar Admissions Process

The Maine Supreme Judicial Court has exclusive jurisdiction to admit attorneys to the bar, which jurisdiction is derived from the

² The Charter is attached to this report as Appendix B.

inherent power and authority of the Court.³ In order to implement this power, the Court created the MBBE and promulgated bar admission rules to guide it in “designing, administering and passing judgment on examinations taken by those individuals seeking admission to the bar.”⁴

The MBBE is tasked with protecting the public by assessing whether applicants to the bar are adequately prepared for entry-level practice (often referred to as “minimum competence”) and ensuring an applicant’s good character and fitness.⁵ Accordingly, all applicants for admission to the Maine bar must either attain a passing grade on the bar examination or modified bar examination, or complete the requirements for admission by motion; attain a passing grade on the Multistate Professional Responsibility Examination (MPRE);⁶ and produce satisfactory evidence of good character and fitness.⁷

A. Maine Bar Examination

The Maine bar examination is a two-day, 12-hour examination,

³ See *In re Hughes*, 594 A.2d 1098, 1100 (Me. 1991); *In re Feingold*, 296 A.2d 492, 496 (Me. 1972).

⁴ 4 M.R.S. § 801.

⁵ *Id.* § 805-A; M. Bar Admission R. 8.

⁶ The MPRE is a two-hour, multiple-choice examination that is administered separately from the bar examination. It is based in part upon the Model Rules of Professional Conduct and is designed to measure an applicant’s knowledge and understanding of the standards governing the professional conduct of lawyers. Nat’l Conference of Bar Exam’rs, *Multistate Professional Responsibility Examination*, <http://www.ncbex.org/exams/mpre/> (last visited Nov. 12, 2016).

⁷ M. Bar Admission R. 8.

administered in February and July of each year. It is comprised of three components: (1) six 45-minute essay questions; (2) one Multistate Performance Test (MPT); and (3) the Multistate Bar Examination (MBE). The essay questions and MPT are administered on the Tuesday of each test administration and the MBE is administered on the Wednesday of each test administration.

The Maine bar examination begins with six MBBE-drafted essay questions. The first essay question involves a series of short answer questions testing on the Maine Rules of Civil Procedure, the Maine Rules of Unified Criminal Procedure, and the Maine Rules of Appellate Procedure. This question is open book and examinees are provided with copies of the rules of procedure and a calendar in order to respond to questions asking the examinees to calculate filing deadlines. The second essay question tests on a combination of the Maine Rules of Professional Conduct and the Maine Rules of Evidence. The topics for the remaining four essay questions are chosen from the list of subjects contained in Maine Bar Admission Rule 10(d)(1).⁸ These essay questions are not required by the bar admission rules to be specific to Maine law but instead may involve application of general law. Examinees' essay scores

⁸ The possible subjects include business associations, conflict of laws, constitutional law, contracts, creditors' rights, criminal law, equity, estates, wills and trusts, evidence, family law, agency, partnerships, real property, statute of frauds, statutes of limitations, federal income taxation, torts and the Uniform Commercial Code. M. Bar Admission R. 10(d)(1).

are based upon an individual's ability to identify legal issues and coherently analyze those issues within the prescribed period of time.

The final question on the first day of the bar examination is the MPT, which is a 90-minute task drafted by NCBE that requires an examinee to use fundamental lawyering skills to complete a task that a beginning lawyer should be able to accomplish. Examples of the tasks include drafting a memorandum to a supervising attorney, a letter to a client, or a persuasive brief. Because the MPT tests an individual's lawyering skills rather than substantive knowledge, the examinee is provided with all documents and information necessary to complete the task, including the law, transcripts, and other relevant documents. Examinees must be able to distinguish relevant from irrelevant facts, analyze applicable law, apply the relevant law to the relevant facts, identify and resolve ethical issues, and communicate effectively in writing.⁹

The final component of the Maine bar examination is the MBE, which is a 200-question multiple-choice examination drafted by NCBE that is administered nationwide¹⁰ on the Wednesday of each bar exam

⁹ Nat'l Conference of Bar Exam'rs, *Preparing for the MPT*, <http://www.ncbex.org/exams/mpt/preparing/> (last visited Nov. 12, 2016).

¹⁰ Louisiana is the only state that does not administer the MBE. Nat'l Conference of Bar Exam'rs, *Multistate Bar Examination*, <http://www.ncbex.org/exams/mbe/> (last visited Oct. 16, 2016).

administration. The examination contains 25 questions from each of the following subject areas: civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. The MBE is designed to assess an individual's ability to apply fundamental legal principles and legal reasoning in analyzing fact patterns.¹¹

After the three exam components are graded, the raw written scores are scaled¹² by NCBE to the MBE, with a weight of 7/11 assigned collectively to the essays and MPT, and a weight of 4/11 assigned to the MBE.¹³ Currently, applicants who achieve a combined scaled score of at least 138 points out of a possible 200 points pass the Maine bar examination and are eligible for admission.

B. Modified Bar Examination

Applicants for the Maine bar who have been in the active practice of law for three of the last five years or have taken the MBE in the prior 61 months may elect to take only the first day of the bar examination, which

¹¹ Nat'l Conference of Bar Exam'rs, *Preparing for the MBE*, <http://www.ncbex.org/exams/mbe/preparing/> (last visited Oct. 16, 2016).

¹² Scaling is a statistical procedure that puts the essay and MPT raw scores on the same score scale as the MBE. Susan M. Case, *Frequently Asked Questions About Scaling Written Test Scores to the MBE*, 75(4) THE BAR EXAMINER 42, 42 (Nov. 2006). The MBBE has likened the scaling process to "temperatures read on the Fahrenheit and Celsius scales. In order to add them together one or the other score has to be converted so that the two readings are on the same scale." Laurie A. Gibson, *How the Bar Examination is Graded in Maine*, 17 Me. Bar J. 136, 137 (Summer 2002).

¹³ M. Bar Admission R. 10(g).

is known as the modified bar examination.¹⁴ Applicants may either use their prior MBE score or re-take the MBE and use the higher score. Further, applicants who previously achieved an MBE score of 155 or higher may choose to take only the first two essay questions, which test the Maine Rules of Civil, Criminal, and Appellate Procedure, Professional Conduct, and Evidence.¹⁵

C. Admission by Motion

An attorney admitted in another U.S. jurisdiction may be admitted without taking the Maine bar examination if the applicant is an active member in good standing of another jurisdiction that has reciprocity with Maine. An applicant for admission by motion must present evidence that he or she has been engaged in the active practice of law in New Hampshire or Vermont for the immediately preceding three years or has been engaged in the active practice of law in another U.S. jurisdiction for five of the immediately preceding seven years, meets the educational requirements, has passed the MPRE, possesses good character and fitness, and has completed 15 hours of continuing legal education on Maine practice and procedure within one year prior to admission.¹⁶

¹⁴ *Id.* 10(e)(1).

¹⁵ *Id.* 10(e)(2).

¹⁶ *Id.* 11A.

D. Character and Fitness Review

Whether an applicant is seeking admission by examination or admission by motion, he or she must produce “satisfactory evidence of good character and fitness to practice law.”¹⁷ The MBBE’s time-intensive, multi-level character and fitness review process may include document review, personal interviews, a three-member panel investigation and, in some instances, a public hearing. An applicant who is determined to possess good character and fitness to practice law who is also eligible for admission by examination or motion is issued a certificate of qualification recommending admission to the Maine bar.¹⁸

III. The Uniform Bar Examination

The UBE is a uniformly administered, graded, and scored bar examination that is “designed to test the knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law.”¹⁹ Every UBE jurisdiction administers the same examination components and utilizes the same grading standards. It results in a portable score that may be used to apply for admission in other UBE jurisdictions.

¹⁷ *Id.* 9(a).

¹⁸ *Id.* 8.

¹⁹ Nat’l Conference of Bar Exam’rs, *Uniform Bar Examination*, <http://www.ncbex.org/exams/ube/> (last visited Nov. 12, 2016).

Although UBE scores are portable, admission in one jurisdiction does not guarantee admission in other UBE jurisdictions. Each jurisdiction may determine its own period for acceptance of UBE scores earned elsewhere. In addition to the transfer period, UBE jurisdictions retain control over other important aspects of the bar admissions process, including but not limited to the underlying educational requirements, passing score, testing accommodations, and character and fitness.²⁰

A. UBE Components

The UBE is comprised of three assessment tools: (1) the Multistate Essay Examination (MEE); (2) two MPTs; and (3) the MBE. In order to receive a portable UBE score, an applicant must sit for all three examination components in the same test administration and may not transfer individual component scores received in prior administrations. This ensures that the UBE scores are comparable.²¹

The MEE and MPTs are administered on the Tuesday of each test administration, and the MBE is administered on the Wednesday of each test administration. As noted above, Maine already administers the MBE and one MPT. It does not, however, administer the MEE. Instead, the

²⁰ *Id.*

²¹ Kellie R. Early, *The UBE: The Policies Behind the Portability*, 80(3) THE BAR EXAMINER 17, 18 (Sept. 2011).

MBBE's attorney members draft essay questions, some of which test upon specific Maine law.

The MEE consists of six 30-minute essay questions that are drafted by the NCBE but graded by the individual jurisdictions pursuant to a uniform grading rubric. The MEEs test an individual's knowledge of generally accepted legal principles in the following areas of law: business associations (agency, partnership, corporations, and limited liability companies), civil procedure, conflict of laws, constitutional law, contracts (including Article 2 of the UCC), criminal law and procedure, evidence, family law, real property, torts, trusts and estates (decedents' estates, trusts and future interests), and secured transactions (Article 9 of the UCC).²² According to NCBE, the purpose of the MEE is to test an individual's ability to identify legal issues, separate relevant from irrelevant material, present a reasoned analysis, and demonstrate an understanding of fundamental legal principles.²³

The MEEs must be graded pursuant to generally applicable principles of law rather than jurisdiction-specific law in order to maintain the uniformity and meaning of a score across jurisdictions. This means that if an examinee answers an MEE question according to the law of the

²² Nat'l Conference of Bar Exam'rs, *Preparing for the MEE*, <http://www.ncbex.org/exams/mee/preparing/> (last visited Nov. 12, 2016).

²³ Nat'l Conference of Bar Exam'rs, *Jurisdictions Administering the MEE*, <http://www.ncbex.org/exams/mee/> (last visited Nov. 12, 2016).

jurisdiction in which the examinee is sitting for the exam rather than general principles of law, the examinee will not receive credit for the answer. This is true even if the answer clearly demonstrates knowledge of the jurisdiction's law. Adhering to NCBE's grading rubrics ensures that the same score is assigned by all UBE jurisdictions to the various issues tested by the MEE.²⁴

B. Increasing Acceptance of the UBE

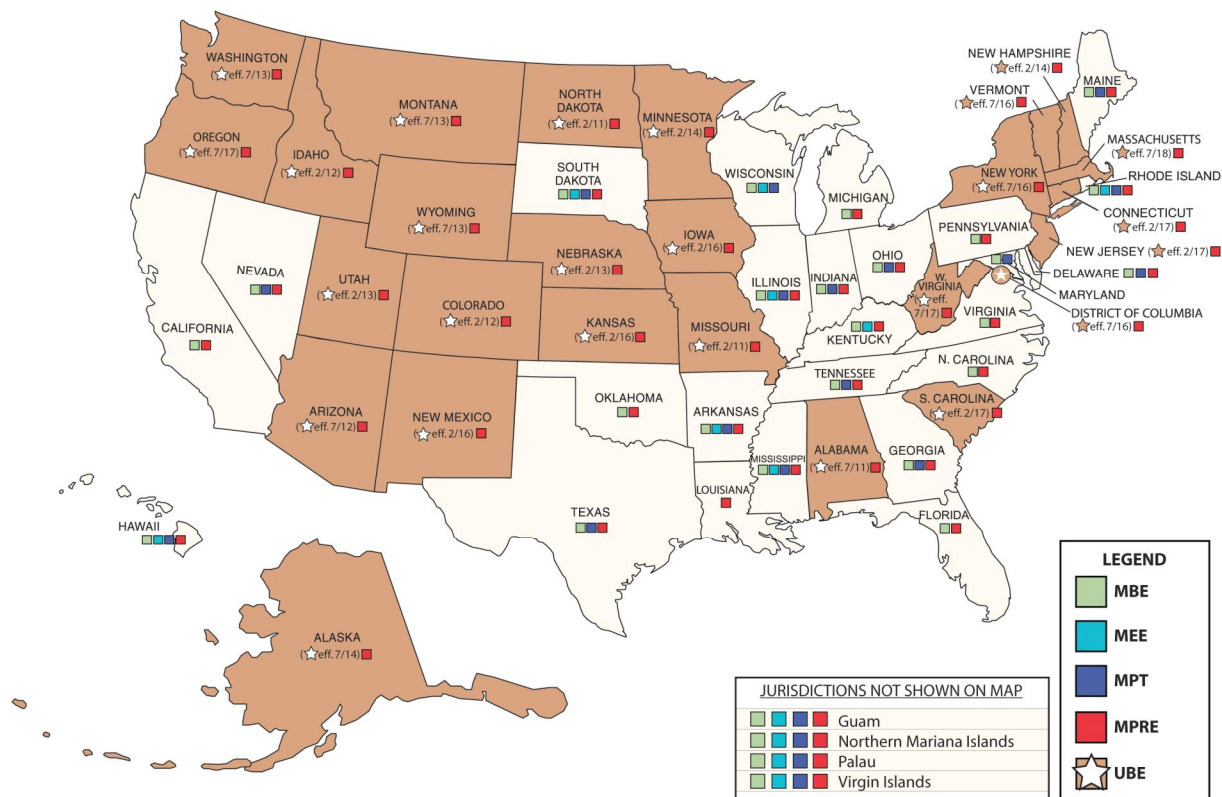
The concept of a uniform bar examination was first explored in 2002, when representatives from NCBE, the ABA, the Association of American Law Schools, and the Conference of Chief Justices formed the Joint Working Group on Legal Education and Bar Admissions. NCBE conceptualized and developed the UBE in the following years, with the first administration of the UBE occurring in 2011.²⁵

Since its first administration, the UBE has gained growing acceptance across the country. As of the date of this report, twenty-six jurisdictions have adopted the UBE (illustrated below).²⁶

²⁴ Early, *supra* note 21, at 18.

²⁵ Diane F. Bosse, *A Uniform Bar Examination: The Journey From Idea to Tipping Point*, 85(3) THE BAR EXAMINER 19, 19-21 (Sept. 2016).

²⁶ Those jurisdictions include Alabama, Alaska, Arizona, Colorado, Connecticut, Idaho, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, South Carolina, Utah, Vermont, Washington, West Virginia, Wyoming, and the District of Columbia. See Nat'l Conference of Bar Exam'rs, *UBE Statistics*, 85(3) THE BAR EXAMINER 11, 18 (SEPT. 2016); Nat'l Conference of Bar Exam'rs, *Jurisdictions That Have Adopted the UBE*, <http://ncbex.org/exams/ube/> (last visited Oct. 22, 2016).



[Source: Nat'l Conference of Bar Exam'rs, *Adoption of the Uniform Bar Examination with NCBE Tests Administered by Non-UBE Jurisdictions*, <http://www.ncbex.org/pdfviewer/?file=http%3A%2F%2Fwww.ncbex.org%2Fdmsdocument%2F196> (last visited Nov. 12, 2016).]

Massachusetts recently adopted the UBE and has indicated that it will first administer the examination in July 2018.²⁷

In addition to the increasing popularity amongst jurisdictions, the UBE has been endorsed by a number of organizations. In February 2016, the Conference of Chief Justices adopted a resolution urging bar admission authorities to consider implementing the UBE.²⁸ Shortly

²⁷ Massachusetts Court System, *Notice: Adoption of Uniform Bar Examination*, <http://www.mass.gov/courts/court-info/sjc/notice-adoption-of-uniform-bar-examination.html> (last visited July 25, 2016).

²⁸ Conference of Chief Justices, *Resolution 10, Urging Consideration of Implementation*

thereafter, the ABA adopted a resolution urging bar admission authorities to “expeditiously” adopt the UBE.²⁹

IV. The Commission’s Methodology

The Commission started its work in early June 2016 by reviewing the current Maine bar admission rules, reports issued by other states contemplating adoption of the UBE, articles about the UBE, and articles about the inclusion of an additional state-specific component by other UBE jurisdictions. This research provided a strong foundation for the Commission’s first meeting, which was held on June 2, 2016.

During its first meeting, the Commission entertained a presentation from the MBBE providing an overview of the Maine bar admissions process and the UBE. The Commission also developed a master plan to accomplish its charges, consisting of seeking public comment on adoption of the UBE, meeting with NCBE to receive additional information on the UBE and answers to the Commission’s questions, dividing into subcommittees to study specific issues, and holding a final

of Uniform Bar Exam (Feb. 3, 2016), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02012016-Urging-Consideration-Implementation-Uniform-Bar-Examination.ashx> (last visited Nov. 12, 2016). This resolution urged adoption for a variety of reasons, including because the UBE is a “uniform, high-quality examination of minimum competence to practice law,” the national adoption of which will “make the bar examination process more efficient and less costly for recent law school graduates.” *Id.*

²⁹ Am. Bar Ass’n, *Resolution, Report No. 109* (Feb. 8, 2016), http://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_midyear_109.docx (last visited Nov. 12, 2016).

plenary meeting in October 2016 to finalize the Commission's recommendations.

The full Commission met for the second time on June 29, 2016, to entertain a presentation by Kellie Early, NCBE's Chief Operating Officer. Ms. Early provided a detailed overview of the UBE and answered the Commission's specific questions. During the presentation, Ms. Early generally addressed such issues as the overall purpose of the bar examination, the UBE test development process, scoring and scaling the UBE, reliability and validity of the UBE components, transferability and reciprocity, and the option to include an additional exam component testing state law. Ms. Early subsequently supplemented her presentation with a number of articles explaining the MEE and MPT grading procedures, the importance of reliability and validity to the bar examination, and the scaling process.

A. Public Comment

Following its first meeting, the Commission drafted a Notice of Opportunity for Comment on Adoption of the Uniform Bar Examination, providing background information on the UBE and the current Maine bar examination and inviting written comments on the adoption of the UBE in Maine and its integration into the current Maine bar admission

process. The notice was posted on the judicial branch and MBBE websites on June 15, 2016.³⁰

Because of the importance of this issue and its impact on the future of the legal profession in Maine, the Commission was eager to receive comments from the public. It therefore took a number of additional steps to ensure the notice would reach as many individuals as possible. *Maine Lawyers Review*, which has a readership of approximately 2,500 individuals, published the notice on June 23, 2016. Cleaves Law Library emailed the notice to over 900 individuals on June 17, 2016, and again on July 22, 2016. The MSBA distributed the notice to approximately 3,200 members in an email blast on June 27, 2016, and again on July 20, 2016. The Commission also individually emailed the presidents of the County Bar Associations on June 27, 2016, and asked that they disseminate the notice to their membership.

Despite these efforts, the Commission received only a small number of written comments.³¹ Additionally, although many of the organizations with representatives on the Commission did not submit written comment, those organizations' views were expressed through their representative Commission members.

³⁰ The Notice of Opportunity for Public Comment on Adoption of the Uniform Bar Examination is attached to this report as Appendix C.

³¹ The written public comment is attached to this report as Appendix D.

The written comments were largely supportive of adopting the UBE.³² Those in favor of the UBE highlighted the benefits to the State of Maine in diversifying its demographics and enhancing the quality of legal representation available to its citizens. Several commenters, including the New Lawyers Section of the MSBA and the Student Bar Association of the University of Maine School of Law, provided the perspective of law students and newer attorneys, stressing the benefits of portability and explaining that the UBE will reduce the expense of the admissions process while increasing employment opportunities. Other commenters provided the perspective of practicing attorneys and emphasized that the UBE would diminish the hardships associated with relocation, particularly for military spouses.

The two comments against UBE adoption also provided valuable input to the Commission's deliberations. One commenter voiced concern that adopting the UBE would remove the MBBE's ability to assess an examinee's readiness to serve Maine clients, noting that individuals are often learning Maine law for the first time during the bar preparation process because students are not taught it in school. A second

³² One commenter suggested that Maine abolish the bar examination, which was not an option proposed or considered by the Commission.

commenter expressed the view that new lawyers should be required to know Maine's rules.

The Commission was appreciative of those who took the time to submit thoughtful written comments. Each comment was taken into consideration throughout the Commission's deliberative process.

B. Subcommittees

In order to efficiently achieve its charges within the time allotted by the charter, the Commission formed two subcommittees to separately research and analyze specific issues in order to inform the Commission's final recommendations: the UBE Adoption Subcommittee and the UBE Local Law Component Subcommittee. All Commission members served on at least one subcommittee, with a great number of the members serving on both subcommittees.

The UBE Adoption Subcommittee was tasked with researching and considering the overall question of whether Maine should adopt the UBE. The subcommittee first met on August 4, 2016, and identified specific issues requiring research and resolution in order to complete its task, including (1) scoring and scaling the UBE, (2) transferability of UBE scores, (3) interaction of the UBE and reciprocity, (4) the UBE's impact upon minorities, genders, and foreign applicants, (5) Maine's maintenance of a continuing relationship with the Council of Bar

Admission Administrators' Committee on the UBE, and (6) consideration of a transition plan.³³ The subcommittee spent more than a month compiling and digesting its research on the various topics. It met for a second session on September 8, 2016, to review and discuss the results of the research and formulate a tentative recommendation for the full Commission.

The UBE Local Law Component Subcommittee was tasked with considering whether, in the event the Court adopts the UBE, Maine should require a state-specific component in connection with admission to the bar. The subcommittee met on three different occasions: August 5, 2016, August 19, 2016, and September 9, 2016. Both between and during these meetings, the subcommittee researched and debated a number of issues, including but not limited to (1) the overall purpose of the bar examination; (2) whether the current Maine bar examination tests any necessary subjects that are not tested by the UBE; (3) whether any aspect of Maine law is so different from general principles of law that Maine should require an applicant to study and pass an examination on those areas of law; (4) whether the addition of a state-specific component undermines the portability feature of the UBE; (5) whether continuing

³³ The subcommittee also considered the question of adopting a diploma privilege, but ultimately referred the matter to the MBBE, which has agreed to undertake further research and consideration of the issue. This issue is therefore not addressed in this report.

legal education programs are effective mechanisms to convey information of Maine law to recent admittees; and (6) the costs and administrative burdens associated with development of a local law component.

Both subcommittees issued informal written reports to the Commission summarizing their methodology, research, and recommendations. The full Commission then held a final session on October 12, 2016, to solidify its conclusions and recommendations. During the final meeting, each Commission member expressed his or her individual views regarding adoption of the UBE and the necessity of a state-specific component. The Commission then formally voted on (1) whether to recommend adoption of the UBE, (2) whether to recommend adoption of a pre-admission, jurisdiction-specific component, and (3) whether to recommend any alternative to a pre-admission, jurisdiction-specific component.

V. Research and Analysis

A. Reliability and Validity

A fundamental and recurring consideration addressed during Commission meetings was the reliability and validity of the UBE as compared to the current Maine bar examination. An examination is reliable if it produces stable and consistent results, meaning that an examinee would receive the same score if the examination were

administered to that examinee a second time. Scores from written tests have a much lower reliability factor than multiple choice examinations such as the MBE for a variety of reasons, including the small number of essay questions typically posed by the examination, and variations in the difficulty of questions and grader standards within and across exam administrations.³⁴

In order to maximize reliability of the UBE, NCBE requires that UBE jurisdictions scale the MEE and MPT raw scores to the highly-reliable MBE and assign a weight of 50% to the MBE score. In comparison, Maine assigns a significantly greater weight to the written component of its bar examination and only weights the MBE at 4/11 of the overall score. Although the MBE has no assessment tools to measure actual reliability of *its* examination, the Commission concluded that the UBE necessarily produces a more reliable score than the current Maine bar examination.

In addition to reliability, the Commission considered the related concept of validity, which questions whether the bar examination measures the knowledge and skills that a newly licensed attorney must possess to practice law. A bar examination's validity is enhanced by

³⁴ See Susan M. Case, *What Everyone Needs to Know About Testing Whether They Like it or Not*, 81(2) THE BAR EXAMINER 29, 29-30 (June 2012); Susan M. Case, *Back to Basic Principles: Validity and Reliability*, 75(3) THE BAR EXAMINER 23, 24 (Aug. 2006).

using multiple testing methods that are designed to measure different skills. However, because reliability is a prerequisite for validity, scores that are unreliable cannot be valid.³⁵

Both in its written response to the Commission's request for public comment and during Commission meetings, the MBBE expressed concern regarding the unknown validity of its essay questions. There is no question that the MBBE expends extensive effort developing the Maine essay questions and answers. While there are neither external resources nor in-house expertise to accomplish formal analysis of validity and reliability, the process used by the MBBE in designing and vetting the essay questions is focused on these properties. All members participate in multi-level review of each question for consistency in the level of difficulty, appropriate length considering time constraints, clarity of the call of the question, and match between content and what an examinee should fairly be expected to know. Moreover, the MBBE strives for consistency among its members in grading approaches, methodology, and stringency.

However, the MBBE essay drafters are practicing attorneys, not professional bar exam drafters or even necessarily content experts, with

³⁵ See Susan M. Case, *The Purpose of the Bar Exam: To Predict Future Success as a Lawyer?* 78(4) THE BAR EXAMINER 35, 37 (Nov. 2009); Case, *supra* note 34, at 23 (Back to Basic Principles).

limited training in bar exam drafting. The MBBE's best efforts and careful attention notwithstanding, there is currently no evidence-based assessment of whether the overall scores achieved from the Maine essay questions reflect a true measurement of competence to practice law.

By contrast, the MEEs are subject to a rigorous drafting and review process to ensure validity. Each MEE and corresponding answer are written and edited by a drafting committee comprised of professors, practicing attorneys, and judges from a range of jurisdictions. The "thoroughness, accuracy, and clarity" of each MEE are then evaluated by an outside content expert. Each MEE is also pre-tested by 10 newly-licensed attorneys, who provide feedback and rate each item on clarity, difficulty, bias, and appropriateness for a bar examination. After the MEE is subject to further editing and review, the question is designated "test ready." The entire process takes approximately two and one-half years per item.³⁶

The Commission concluded that the UBE is both reliable and valid whereas the current Maine bar examination is of unknown reliability and validity. This conclusion provided a lens through which the Commission viewed many of the other issues related to UBE adoption and inclusion of a state-specific component.

³⁶ Judith A. Gundersen, *MEE and MPT Test Development: A Walk-through from First Draft to Administration*, 84(2) THE BAR EXAMINER 29, 29-36 (June 2015).

B. Portability and Related Issues

The United States is one of the most mobile countries in the world.³⁷ The UBE's greatest benefit is that it inherently recognizes the mobility of our society and provides individuals with a portable bar examination score that may be used as a basis to seek admission in other UBE jurisdictions.

Supporting portability and encouraging lawyer mobility are beneficial for the State of Maine as a whole. According to the U.S. Census Bureau, Maine is the oldest state in the country.³⁸ As with the other sectors of the workforce, Maine also has an aging bar. At the close of 2013, 47% of Maine attorneys were age 55 and older.³⁹ Since that time, the average age of the bar has increased. As of November 2, 2016,

³⁷Gallup, *381 Million Adults Worldwide Migrate within Countries* (May 15, 2013), http://www.gallup.com/poll/162488/381-million-adults-worldwide-migrate-within-countries.aspx?utm_source=alert&utm_medium=email&utm_campaign=syndication&utm_content=morelink&utm_term=All%20Gallup%20Headlines (last visited Nov. 12, 2016).

³⁸ Maine Develop. Found., *Maine's Labor Shortage: New Mainers and Diversity*, at 1 (Sept. 22, 2016), <http://mdf.org/publications/Maines-Labor-Shortage-New-Mainers-and-Diversity/895/> (last visited Nov. 12, 2016) (finding that Maine is the oldest and whitest state in the country, with a median age of 43.5 and 18.3% of its population over the age of 65).

³⁹ Board of Overseers of the Bar, Demographics Task Force, *Report and Recommendations of the Board of Overseers of the Bar's Task Force to Study Bar Demographics*, at 9 (June 6, 2014), <http://www.mebareoverseers.org/DemographicsTaskForce/Docs/Task%20Force%20Report%20-%206.6.14.pdf> (last visited Nov. 12, 2016).

there were 3,949 attorneys living and practicing in Maine. Of those, 1,928 attorneys representing 48.8% of the bar were age 55 and over.⁴⁰

The UBE's score portability provisions may encourage younger and more diverse attorneys to consider practicing law in Maine. The Commission is optimistic that encouraging in-migration to the State will, in turn, positively affect Maine's citizens. A great impediment to accessing justice in Maine, as in other states, is the inability of Maine citizens to afford legal assistance.⁴¹ The State of Maine is extremely fortunate to have a bar comprised of attorneys who are generous with their time. In 2015, Maine attorneys contributed more than \$2 million in free legal services.⁴² But the reality is that more can be done to enhance access to justice throughout the State, including removing unnecessary barriers to bar admissions. Although the Commission cannot know whether new attorneys utilizing the UBE's portability feature will migrate

⁴⁰ The situation is worse in some of Maine's more rural counties. For example, 65.5% of Franklin County's bar and 63.9% of Somerset County's bar is age 55 and over. Even in York County, the second most populous county in Maine, 55.2% of its bar is age 55 and older. Maine Board of Overseers of the Bar, *Age/County Demographic Report* (Nov. 2, 2016).

⁴¹ State of Maine Judicial Branch, Chief Justice Leigh I. Saufley, *A Report to the Joint Convention of the First Regular Session of the 127th Legislature*, at 9 (Feb. 24, 2015) http://www.courts.maine.gov/maine_courts/supreme/speeches/2015_soj.html (last visited Nov. 12, 2016).

⁴² State of Maine Judicial Branch, Chief Justice Leigh I. Saufley, *A Report to the Joint Convention of the Second Regular Session of the 127th Legislature*, at 4 (March 9, 2016) http://www.courts.maine.gov/maine_courts/supreme/speeches/2016_soj.html (last visited Nov. 12, 2016).

to the State’s rural areas most in need of more lawyers,⁴³ other jurisdictions have expressed an expectation that score portability will benefit the public by increasing legal resources in underserved areas.⁴⁴

Score portability will also benefit law firms and attorneys. The practice of law is increasingly multijurisdictional, often necessitating that attorneys be admitted in multiple states in order to efficiently and effectively provide legal representation to clients. Maine law firms will be better able to capitalize on multijurisdictional business opportunities as they arise if their attorneys are more easily able to seek admission in other jurisdictions. Likewise, law students and practicing attorneys will be better able to capitalize on employment opportunities if they are not faced with the financial and timing barriers associated with taking the bar examination in multiple jurisdictions. This will be of particular

⁴³ A minority of the Commission expressed the concern that the UBE will exacerbate rather than ameliorate the challenge of attracting attorneys to rural areas of Maine. This concern is premised in the belief that the UBE will increase the outsourcing of legal work to out-of-state law firms who practice in such areas as title work, closings, collections, and foreclosures. The minority is concerned that an expanded number of attorneys admitted in Maine will negatively impact those graduating from the University of Maine School of Law, who may currently be experiencing difficulty locating jobs anywhere in Maine, including in rural counties.

⁴⁴ See, e.g., Advisory Committee on the Uniform Bar Examination, *Ensuring Standards and Increasing Opportunities for the Next Generation of New York Attorneys, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals* (April 2015) at 40, https://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf (last visited Nov. 12, 2016) (hereinafter cited as “New York Report”).

assistance to military spouses and partners who are faced with frequent and often sudden transfers to other jurisdictions.

Despite these benefits, it again bears emphasis that *score* portability is not the functional equivalent of *licensure* portability. Although the UBE permits an applicant to utilize his or her score to apply for admission, each jurisdiction retains ultimate control over the admission process. This means that if the Court were to adopt the UBE, it would continue to retain ultimate authority over eligibility requirements and character and fitness decisions, among other things.

1. Transferability and Reciprocity

In furtherance of portability, UBE jurisdictions must accept transferred UBE scores, but each jurisdiction may determine its own time limit for accepting those scores. During her June 29, 2016, presentation to the Commission, Kellie Early explained that the UBE score represents a measure of an applicant's knowledge and skills at a particular time. The more time that has passed from when the applicant took the test, the less likely the score represents an applicant's current competency to practice law. NCBE has previously advised jurisdictions to "accept past scores for an interval that is reasonable to assume that

the applicant's knowledge base has been maintained or has increased since the applicant took the exam.”⁴⁵

The 2016 Comprehensive Guide to Bar Admission Requirements reflects that jurisdictions have implemented a wide variety of transfer periods, ranging from two to five years, with the most popular being a three-year transfer period. Only four states implemented a hybrid approach, combining the transfer period with a practice requirement. For example, New Hampshire permits an applicant to transfer a UBE score that is more than three years but less than five years old if the applicant has been primarily engaged in the active practice of law for at least two years in another jurisdiction.⁴⁶

The Commission recommends a three-year transfer period upon payment of the same fee associated with admission by motion, which is currently \$900.⁴⁷ This recommendation is not only in line with the majority of other jurisdictions, but it promotes portability while ensuring that individuals still possess minimum competence to practice law at the time of admission.

⁴⁵ Early, *supra* note 21, at 20.

⁴⁶ See Nat'l Conference of Bar Exam'rs, *Comprehensive Guide to Bar Admission Requirements 2016*, at 32-33 (2016), <http://www.ncbex.org/pubs/bar-admissions-guide/2016/index.html#p=1> (last visited Nov. 12, 2016) (hereinafter cited as “Comprehensive Guide”).

⁴⁷ The application fee charged by jurisdictions for admission by transferred UBE score ranges from \$150 (plus the NCBE report fee) to as much as \$1,250. *Id.* at 32.

Reciprocity pursuant to the modified bar examination and admission by motion presented related issues for the Commission's consideration. The modified bar exam, which consists of only the written component of the Maine bar examination, is available to attorneys who have practiced law for three of the last five years or have taken the MBE in the prior 61 months. Applicants who previously achieved an MBE score of 155 or more may choose to take a further modified bar examination, which consists of only the first two essay questions testing on the Maine rules of procedure, professional conduct, and evidence. Admission by motion is available to attorneys who have been engaged in the active practice of law in New Hampshire or Vermont for the preceding three years or have been engaged in the active practice of law in another U.S. jurisdiction with which Maine has reciprocity, for five of the preceding seven years.

In conjunction with the recommendation that UBE scores be transferrable for up to three years, the Commission recommends amending the time-in-practice requirement contained in the admission by motion rule⁴⁸ to permit reciprocal admission of all attorneys who have been in the active practice of law for three of the immediately preceding five years, consistent with the ABA Model Rule for Admission by

⁴⁸ M. Bar Admission R. 11A(a).

Motion.⁴⁹ The Commission agrees with the ABA that there is “no reason to believe that lawyers who have been engaged in the active practice of law for three of the last five years will be any less able to practice law in a new jurisdiction than a law school graduate who recently passed the bar examination in that jurisdiction.”⁵⁰ The combination of a three-year transferability period and the reduction in the time-in-practice requirement for admission by motion would then make the modified bar examination superfluous, and allow it to be eliminated.

2. Dual-Admission Applicants

The ability to transfer a UBE score will be of importance to those dual admission applicants who are currently able to sit concurrently for the Maine and Massachusetts bar examinations. At present, Maine and Massachusetts have a coordinated examination schedule whereby Maine administers its written component on Tuesday, both jurisdictions administer the MBE on Wednesday, and Massachusetts administers its written component on Thursday. This allows applicants to sit for both bar examinations in a single administration.

⁴⁹ Am. Bar Ass’n, Comm’n on Ethics 20/20, *Report to the House of Delegates* (2012), www.americanbar.org/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_resolution_and_report_admission_by_motion_posting.authcheckdam.pdf.

⁵⁰ *Id.* at 5. The ABA Commission on Ethics 20/20 Report went on to explain that “there is no evidence from disciplinary counsel or any other source that these [reciprocally admitted] lawyers have been unable to practice competently in the new jurisdiction or have been unable to identify and understand aspects of the new jurisdiction’s law that differ from the law of the jurisdiction where those lawyers were originally admitted.” *Id.*

Massachusetts recently adopted the UBE, however. Starting in July 2018, therefore, Massachusetts will no longer administer essays on Thursday. It will instead follow the UBE schedule, which requires that the MEE and MPT be administered on Tuesday and the MBE be administered on Wednesday. Applicants who were previously able to sit for both examinations in a single administration will then be forced to choose between taking the UBE, which provides a portable score for potential use in many jurisdictions, and taking the Maine bar examination, which does not provide a portable score and potentially limits applicants' job possibilities. It is possible that this will result in decreased bar admission numbers in Maine, which could exacerbate the access to justice problem that already exists in this State.

3. Recommended Passing Score

By rule, the MBBE is designated the authority to set the passing score at a number appropriate to “demonstrate sufficient learning in the law” to practice in the State of Maine.⁵¹ For a number of years, the MBBE has set the passing score at 138 out of a possible 200 points. In the event that the Court adopts the UBE, the Commission recommends that the authority to set the passing score remain with the MBBE. It suggests, however, that Maine's current passing score of 138 be doubled

⁵¹ M. Bar Admission R. 10(g)(1).

to 276 when converted to the UBE's 400-point scale. Nearly every other jurisdiction also retained its existing passing score following adoption of the UBE.⁵² Although a passing score of 276 is higher than the score adopted by many other jurisdictions, it is consistent with Maine's historic high standards in connection with admission to the bar.

4. Jurisdiction shopping

The MEE and MPT are graded on a relative basis, where graders distinguish among the applicants' answers and rank-order them according to the jurisdiction's score scale.⁵³ Some Commission members expressed a concern that this grading approach might lead to "jurisdiction shopping," where applicants sit for the UBE in a jurisdiction in which the individual's performance on the written components might result in a higher score and then transfer the inflated score for admission into a "harder" jurisdiction.⁵⁴ NCBE acknowledges that jurisdiction shopping is a possibility but has concluded it is "highly unlikely that examinees could successfully 'game the system' in this way" for a variety of reasons, including the difficulty in successfully identifying which

⁵² Erica Moeser, *President's Page*, 85(2) THE BAR EXAMINER 4, 5 (June 2016). See also Comprehensive Guide, *supra* note 45, at 29-33.

⁵³ Judith A. Gundersen, *It's All Relative – MEE and MPT Grading, That Is*, 85(2) THE BAR EXAMINER 37, 38 (June 2016).

⁵⁴ An expansive explanation of the potential for jurisdiction shopping may be found in Suzanne Darrow-Kleinhaus's article, *UBE-Shopping: An Unintended Consequence of Portability?*, 88 N.Y. State Bar J. 46 (July/Aug. 2016).

jurisdictions are “low-performing” jurisdictions so as to enhance an individual’s MEE and MPT scores.⁵⁵

Further, setting Maine’s passing score at 276, which will be higher than the mean, makes it unlikely that an applicant would choose to sit for the UBE in Maine if he or she was not interested in joining the Maine bar. Whether a candidate would choose to take the UBE in an “easier” jurisdiction in order to transfer that score to Maine is another question. Nevertheless, adopting the Commission’s recommended passing score makes the situation unlikely.

C. Pre-admission, Jurisdiction-Specific Component

As part of the admissions process, eight of the twenty-six UBE jurisdictions also administer a separate pre-admission test, course, or combination of the two in order to assess an applicant’s knowledge of local law.⁵⁶ The Commission considered whether Maine should also administer a separate, Maine-specific component by answering three broad questions:

- (1) What is the purpose of the bar examination and does the addition of a local law component further that purpose?

⁵⁵ Mark A. Albanese, *Let the Games Begin: Jurisdiction-Shopping for the Shopaholics (Good Luck with That)*, 85(3) THE BAR EXAMINER 51, 53 (Sept. 2016).

⁵⁶ Massachusetts will be the ninth state to administer a jurisdiction-specific component in July 2018, although it has not yet determined the format. NCBE, *UBE Jurisdiction-Specific Components: Seven Unique Approaches*, 83(3) THE BAR EXAMINER 37, 37 (Sept. 2016).

- (2) Is Maine law so different from general principles of law that the bar examination must assess an applicant's knowledge of those differences in order to ensure minimum competence?
- (3) Assuming adoption of a jurisdiction-specific component, what is the recommended format and why?

After answering these three questions, a majority of the Commission concluded that the addition of a pre-admission, state-specific bar exam component was unnecessary. If the Court is inclined to include a state-specific requirement, however, all Commission members support a post-admission, Maine-specific continuing legal education (CLE) requirement.

1. Purpose of the Bar Examination

The purpose of the bar examination is “to assess competence in matters that are considered essential knowledge and skills for the entry-level lawyer.”⁵⁷ As with other licensure examinations, the UBE does not attempt to ensure that an individual is fully prepared for all situations that may arise in practice. It instead focuses upon the general knowledge, skills, and judgment that are essential for entry-level practice

⁵⁷ Susan M. Case, *How to Test Knowledge of Local Law*, 79(3) THE BAR EXAMINER 31, 31 (Aug. 2010). Although many attorneys ultimately focus their practice on certain areas of the law, the bar examination focuses on the broad range of knowledge, skills and judgment in entry-level practice rather than “advanced topics and esoteric content required for advanced, specialized practice.” Michael T. Kane, *What the Bar Examination Must Achieve: Three Perspectives*, 81(3) THE BAR EXAMINER 6, 7 (Sept. 2012).

across a wide range of contexts.⁵⁸ Because of the UBE's breadth and its inherent reliability and validity, the Commission concluded that there is no reason to cover the content tested by the UBE in an additional jurisdiction-specific examination unless Maine law is so different from general principles of law that the bar examination must assess an individual's knowledge of those distinctions to ensure minimum competence to practice in Maine.

Proponents of a pre-admission, state-specific component view an applicant's knowledge of Maine law, or at least a general awareness of distinctions in Maine law, as a necessary component of the assessment of minimum competence. The Commission continually returned to the concept that a bar examination should not be designed to test for memory or experience, however. According to the Code of Recommended Standards for Bar Examiners, the bar examination should instead test an applicant's ability to identify legal issues, engage in a reasoned analysis, and arrive at a logical solution by applying fundamental legal principles.⁵⁹ The majority of the Commission expressed the view that testing on the minutiae of Maine law does not appear to further those objectives. A minority of the Commission had a different view – that

⁵⁸ See Michael T. Kane, *The Uniform Bar Exam and Jurisdiction-Specific Content*, 78(1) THE BAR EXAMINER 26, 26 (Feb. 2009); Bedford T. Bentley, Jr., *Rethinking the Purpose of the Bar Examination*, 78(1) THE BAR EXAMINER 15, 17 (Feb. 2009).

⁵⁹ Comprehensive Guide, *supra* note 46, at ix.

testing whether an applicant is aware of how and when Maine law differs from multi-state law may further the protective purpose of the bar examination by helping to ensure that newly licensed Maine lawyers are able to competently represent Maine citizens and give competent (and correct) legal advice to them.

2. Maine Law Distinctions

The second question the Commission considered is whether Maine law is so different from general principles of law that the bar examination must assess an applicant's knowledge of those differences in order to ensure minimum competence. To answer this question, the Commission first considered whether there are any significant distinctions between Maine law and the subjects tested by the UBE that new lawyers in Maine should know prior to entering practice. In undertaking this consideration, the Commission discussed each subject tested by the UBE⁶⁰ and segregated the small number of subjects that potentially might present important distinctions in Maine, including torts, trusts and estates, family law, criminal law, and property law.

⁶⁰ The MBE tests upon civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. The MEE may test upon business associations, civil procedure, conflict of laws, constitutional law, contracts, criminal law and procedure, evidence, family law, real property, torts, trusts and estates, and secured transactions.

After reviewing and discussing the subjects tested by the UBE, a majority of the Commission concluded that any distinctions between Maine law and general law are not sufficiently significant that an entry-level attorney must know those distinctions prior to engaging in the practice of law in Maine. Some Commission members pointed to differences in areas such as Maine's statutes of limitations, foreclosure law, and tort principles including a bystander's standing to bring suit. An exam assessing an applicant's awareness of these distinctions would be testing for memory or experience, however, rather than the individual's knowledge, skills, and judgment to practice law.

Some Commission members argued that the Maine bar examination's historic inclusion of state-specific essay questions supports the concept that Maine law distinctions in those areas are sufficiently important to be included on a bar examination. While the Maine bar admission rules currently require that the examination test upon the Maine Rules of Civil Procedure, Unified Criminal Procedure, Appellate Procedure, Evidence, and Professional Conduct, the remainder of the essay questions—including those areas noted above where Maine law may not reflect general law—are not required to be specific to Maine law.⁶¹ Indeed, as the Commission's review of past bar examinations

⁶¹ M. Bar Admission R. 10(d)(1).

established, the Maine essay questions typically test upon general legal principles rather than distinctions presented by Maine law.

Further, like the MBBE, a majority of the Commission questions the necessity of testing upon the Maine rules of procedure, ethics and evidence in order to ensure that an applicant possesses the minimum competence to practice law because, among other reasons (1) many attorneys do not litigate, (2) Maine's procedural rules are very similar to the federal rules, though there are several important differences, (3) Maine's ethics rules have been recently updated to be more consistent with the model rules, and (4) applicants for admission to the Maine bar must sit for and pass the MPRE, the purpose of which "is to measure examinees' knowledge and understanding of established standards related to the professional conduct of lawyers"⁶² and is based upon the Model Rules of Professional Conduct.

During the deliberations, Commission members expressed a concern with the frequency in which new attorneys are starting solo practices, particularly in the areas of family law and criminal law. These new attorneys may be advising clients without the benefit of affiliations or associations with more experienced practitioners who might guide the new attorney on any unique Maine law or procedure. Commission

⁶² Nat'l Conference of Bar Exam'rs, *Preparing for the MPRE*, <http://www.ncbex.org/exams/mpre/preparing/> (last visited Nov. 12, 2016).

members who practice in the family law field noted that Maine law is not so wildly different from general principles of law that an entry-level attorney must know the small number of distinctions prior to engaging in the practice of law. Although the same was generally noted as to the criminal law field, the Commission took added comfort that attorneys who seek to take court appointments must meet the MCILS's Standards for Qualifications of Assigned Counsel⁶³ and complete a training course before taking such appointments.

After concluding that there are not significant distinctions between Maine law and the subjects tested by the UBE, the Commission next considered whether there are areas of Maine law *in addition* to those tested by the UBE that an entry-level attorney must know and be tested on before admission. The Commission reviewed the list of subjects currently tested by the Maine bar examination and concluded that elimination of the few subjects that are not also tested by the UBE, such as federal income taxation, would have minimal impact on an assessment of whether an individual possesses minimum competence to practice law. Additionally, unlike a state such as New Mexico where practices may rely heavily on areas not covered by the UBE such as

⁶³ Maine Comm'n on Indigent Legal Servs., *Standards for Qualification of Assigned Counsel*, <http://www.maine.gov/mcils/rules/rules/Chapter%202%20-%20Final%20Adopted%20to%20SOS.pdf> (last visited Nov. 12, 2016).

Indian Law, there are not such broad areas of distinct difference in Maine.

In sum, a majority of the Commission concluded that a separate pre-admission, state-specific examination is unnecessary to ensure minimum competence and protect the public. Despite reaching this conclusion, the Commission took the further step of researching and considering various state-specific examination formats and corresponding issues in order to guide the Court in its decision-making process.

3. Format and Corresponding Cost

As noted above, only eight jurisdictions currently require a pre-admission, state-specific component. Additionally, Massachusetts has indicated that it, too, will administer a pre-admission, state-specific component when the UBE is administered starting in July 2018, although the format is yet undecided. The remaining 17 UBE jurisdictions do not require a state-specific component.

The Commission grouped the potential jurisdiction-specific pre-admission formats into four general categories: (1) essay questions; (2) a live seminar; (3) an online video seminar, with or without a corresponding test or embedded questions; and (4) an online multiple-

choice test. It then researched and debated the pros and cons of each format.

The Commission easily eliminated two of the four potential formats from consideration. First, the Commission concluded that requiring in-person attendance at a live seminar had great potential to undermine the portability feature of the UBE and, therefore, the live seminar format was not advisable. Second, the Commission felt it was illogical to adopt the UBE, which injects reliability and validity into the Maine bar examination, only to turn around and require examinees to answer MBBE-drafted essays that may or may not be reliable and valid. Including additional state-specific essay questions was therefore also eliminated as a viable option.

The Commission then considered the pros and cons of an online format, whether a video, multiple-choice examination, or some combination of the two. An online format that is offered on demand is consistent with the UBE's score portability feature. The on-demand feature will likely add to the monetary costs, however. Other jurisdictions have spent tens of thousands of dollars developing videos and online courses,⁶⁴ with some small portion of the fees often being

⁶⁴ For example, New York expended approximately \$40,000 in initial start-up costs for its online video course and incurs yearly online streaming costs of \$12,000 to \$15,000. Alabama spent only \$2,000 for its initial video costs but expended an additional \$10,000 for website development and hosting.

passed on to applicants. Although the initial set-up costs would potentially represent 10% or less of the MBBE's present \$164,000 annual budget, there will certainly be continuing and unknown maintenance costs.

The purpose of any online video course is to impart knowledge of Maine law to applicants, which is an obvious benefit. But it will be necessary to constantly update that course to ensure its content is relevant, accurate, and reliable. This, in turn, may require retention of content experts to advise the MBBE on when updates to the online course must occur so as to ensure that accurate information is conveyed to the applicants.

The Commission expressed concern about the MBBE's ability to develop and maintain an online, jurisdiction-specific component. Unlike some other jurisdictions, the MBBE is a volunteer organization and its Board members are not paid any salary or stipend. It has only a three-quarter time executive director, one part-time employee, and no in-house IT staff. The Commission believes that developing and maintaining an online course is too great a burden to place on the MBBE's shoulders. The MBBE would likely be forced to contract out some of its obligations for yet an additional cost.

4. Alternative Option: Post-Admission CLE

As noted above, a majority of the Commission does not find that a pre-admission, jurisdiction-specific component is needed to protect the public and ensure minimum competence to practice law. The Commission as a whole recognizes the value of providing newly-admitted Maine attorneys with the resources and tools necessary to effectively represent clients, however. For that reason, and despite the split in views on a pre-admission requirement, the entire Commission supports a Maine-specific, post-admission CLE requirement in the event that the Court deems it advisable to include a jurisdiction-specific component.

Maine Bar Rule 5 currently requires that every attorney registered to practice law in Maine “shall complete 11 credit hours of approved CLE in each calendar year,” with one of those credit hours “primarily concerned with professionalism education.”⁶⁵ Other than requiring that the credit hours be “approved,” there is no express requirement that the credit hours educate the attorney on Maine law.

The Commission recommends that the Maine Bar Rules be amended to require attorneys to take 11 CLE credit hours specifically on Maine law during their first year of practice. Alternatively, the Commission supports requiring that all newly-admitted attorneys attend

⁶⁵ M. Bar R. 5(a).

a bridging-the-gap program during their first year of practice. Both options serve a dual purpose of protecting the public by imparting knowledge of Maine law to new attorneys while also allowing those attorneys to self-select the practice areas best suited to provide the additional guidance and resources for them to effectively represent clients.

D. Potential Impact upon Applicant Sub-Groups

1. Minorities and Genders

The barriers against entry into and progression within the legal profession are erected early in an individual's education and continue to the bar examination.⁶⁶ Women and racial minorities historically perform lower on standardized examinations,⁶⁷ and the MBE is no exception. NCBE acknowledges this lower performance,⁶⁸ but argues that “research indicates that differences in mean scores between racial and ethnic

⁶⁶ Am. Bar Ass'n, *Resolution, Report No. 117*, at 8 (Feb. 2016), http://www.americanbar.org/news/reporter_resources/midyear-meeting-2016/house-of-delegates-resolutions/117.html (last visited Nov. 12, 2016) (hereinafter cited as “ABA Report No. 117”).

⁶⁷ Racial minorities and women score lower on the Law School Admission Test, which is used as one of the predictors of success in law school. *See id.* at 1; Susan P. Dalessandro, et al., Law School Admission Council, *LSAT Technical Report 12-03, LSAT Performance With Regional, Gender, and Racial/Ethnic Breakdowns: 2005–2006 Through 2011–2012 Testing Years*, at 2 (Oct. 2012), [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf) (last visited Nov. 12, 2016). Similarly, bar passage rates are lower for racial minorities. ABA Report No. 117, *supra* note 66, at 1.

⁶⁸ *See* Susan M. Case, *Men and Women: Differences in Performance on the MBE*, 75 THE BAR EXAMINER 44 (May 2006); ABA Report No. 117, *supra* note 64, at 2.

groups correspond closely to differences in those groups' mean LSAT scores, law school grade point averages, and scores on other measures of ability to practice law, such as bar examination essay scores and performance scores.”⁶⁹

Adoption of the UBE necessarily requires that Maine increase the weight of the MBE from 36% (4/11) to 50%, placing more emphasis on the component in which racial minorities and females perform lower. In considering adoption of the UBE, New York requested that NCBE conduct a simulated analysis on the possible impact of conforming to the UBE weighting requirements on bar passage rates for different test-taker groups using data from the July 2013 and July 2014 examinations. The result of that simulation revealed that some applicants who passed the New York bar examination would have failed and other applicants would have passed under the UBE weighting system. New York ultimately concluded, however, that the impact on passing rates for any subgroup was minimal.⁷⁰

The Commission concluded that there is insufficient data to fully determine the effect of adoption of the UBE upon minority and female applicants. In the event that the Court adopts the UBE, the Commission recommends that it task the MBBE with monitoring research and reports

⁶⁹ ABA Report No. 117, *supra* note 66, at 2.

⁷⁰ New York Report, *supra* note 44, at 58-59.

addressing the impact of the UBE on different sub-groups, including racial and ethnic minorities and females.

2. Foreign Educated Applicants

Each year, a handful of foreign educated applicants seek to take the Maine bar examination.⁷¹ Those applicants are rarely able to establish that they received an education equivalent to that of an ABA-accredited law school, which is required by the bar admission rules and the MBBE's regulation in order to sit for the examination, however.⁷² Despite the slim number of applicants, the Commission endeavored to determine whether adoption of the UBE or a local law component might have a detrimental impact upon foreign educated applicants.

Unfortunately, NCBE does not maintain any data on the impact of the UBE on foreign applicants. In response to the Commission's inquiry, NCBE explained that information about the education backgrounds of examinees is known only to the jurisdictions where the examinee tested. Further, comparing the UBE jurisdictions would present difficulty because each jurisdiction continues to set its own eligibility

⁷¹ Unlike in many other states, graduates of foreign law schools are potentially eligible for admission to the Maine bar. According to the Comprehensive Guide to Bar Admission Requirements, 19 states prohibit admission to graduates from foreign law schools. See Comprehensive Guide, *supra* note 46, at 12-13.

⁷² See M. Bar Admission R. 10(c)(4), 11A(a)(3); Maine Bd. of Bar Exam'rs, *Foreign Legal Education*, <http://mainebarexaminers.org/foreign-legal-education/> (last visited Nov. 12, 2016).

requirements, including whether to allow non-ABA graduates to sit for the bar examination.⁷³

This difficulty likely explains why many of the other states studying adoption of the UBE did not focus upon the UBE's impact on foreign applicants. The New York County Lawyers Association did briefly comment on the issue in connection with New York's process. It noted that some expressed a concern that "a bar examination that places less emphasis on local law would seem on its face to benefit test takers from foreign and out of state law schools who are less likely to have studied New York law."⁷⁴ The Commission believes that this concern has debatable legitimacy. Implementing a local law component in order to potentially benefit in-state law students to the detriment of out-of-state applicants or foreign applicants is an inappropriately protectionist view that does not further the overall purpose of the bar examination.

In sum, the Commission was unable to find any evidence regarding the impact of the UBE or implementation of a local law component on foreign test takers. Due to the slim number of foreign applicants, as well as those applicants' general inability to meet the ABA equivalency criteria set forth in the MBBE's regulation, it is highly unlikely that adoption of

⁷³ September 6, 2016, email from Kellie Early.

⁷⁴ New York County Lawyers Ass'n, *Report on the New York Uniform Bar Exam Proposal* (Feb. 12, 2015), at 10, http://www.nycla.org/siteFiles/Publications/Publications1746_0.pdf (last visited Nov. 12, 2016).

the UBE will have any impact upon foreign applicants for admission to the Maine bar.

E. Other Administrative Considerations

Adoption of the UBE presents very few administrative issues. The UBE only costs an additional \$35 per examinee compared to the current cost to purchase one MPT and the MBE, which is a cost that can be absorbed by the MBBE and does not need to be passed on to applicants. Other than amending the Maine Bar Admission Rules to reflect the necessary changes, there should be no other major transition issues. Maine could therefore administer the UBE as early as the July 2017 examination.

These administrative considerations change dramatically in the event the Court implements a pre-admission, jurisdiction-specific component. Depending upon the ultimate start-up and maintenance costs of any online video or examination, some percentage of the costs may need to be shifted to applicants. It is possible that Maine may see a decrease in bar admission numbers as a result of such a shift.

Additionally, a pre-admission, jurisdiction-specific component, whatever the format, will certainly increase the lead time necessary to implement the UBE. Although the University of Maine School of Law suggested that its curriculum would need little adjustment to comport

with the UBE, it is possible that the School will need to focus more intently upon distinctions in Maine law in the event that a state-specific component is adopted. In fairness to the School and its students, as well as other applicants to the Maine bar, no jurisdiction-specific component should be implemented before July 2018.

VI. Recommendations

The Commission concludes⁷⁵ that adoption of the UBE will ultimately protect the public by providing a more reliable and valid assessment of a bar admission applicant's competence to practice law.⁷⁶ In light of this conclusion and the findings detailed above, the Commission recommends that the Maine Supreme Judicial Court:

- (1) Adopt the UBE, effective for the July 2017 bar exam administration, with a passing score of 276 points out of 400;
- (2) Discontinue administration of the modified bar examination, effective for the July 2017 bar exam administration;
- (3) Accept transferred UBE scores for a period of three years upon payment of the same fee associated with admission by motion;
- (4) Amend the Maine Bar Admission Rules to permit reciprocal admission of attorneys that have been in the active practice of law

⁷⁵ The Commission's motions and corresponding votes are attached to this Report as Appendix E.

⁷⁶ The Commission voted eleven to two in favor of recommending adoption of the UBE. Of the two votes in opposition, one was cast by a member of the MBBE and one was cast by the representative of the Office of the Maine Attorney General, who would not support adoption without a corresponding pre-admission, jurisdiction-specific component. The specific voting record is attached as Appendix E.

for three of the immediately preceding five years, consistent with the ABA Model Rule for Admission by Motion;

- (5) Encourage the MBBE to maintain a close, continuing relationship with the Council of Bar Admission Administrators' Committee on the UBE; and
- (6) Task the MBBE with monitoring research and reports addressing the impact of the UBE on different sub-groups, including racial minorities and genders.

The Commission does not recommend the adoption of any jurisdiction-specific component.⁷⁷ However, in the event that the Court deems it advisable to include a jurisdiction-specific component, the entire Commission is supportive of a post-admission CLE requirement, which may be achieved by amending Maine Bar Rule 5 to require that attorneys take 11 CLE credit hours specifically on Maine law during their first year of practice.

⁷⁷ The motion to recommend adoption of a pre-admission, jurisdiction-specific component failed by a vote of five to eight. Those supportive of a pre-admission, jurisdiction-specific component included representatives from the University of Maine School of Law, Office of the Maine Attorney General, MBBE, MSBA, and Maine Trial Lawyers Association. The specific voting record is attached as Appendix E.

Acknowledgement

The Commission would like to express its gratitude to the Maine legal community for providing insight and assistance throughout the Commission's work. The Commission also extends its appreciation to Cleaves Law Library, the Maine Board of Bar Examiners, *Maine Lawyers' Review*, the Maine Board of Overseers of the Bar, and the Maine State Bar Association, for sharing resources and information so that the Commission might fulfill its charges.

Finally, the Commission extends deep appreciation to the following law firms and organizations, which so graciously encouraged Commission members to devote the time and energy necessary to study this important issue:

Bergen & Parkinson

Berman & Simmons

Bernstein Shur

Cumberland County District Attorney's Office

Kelly, Remmel & Zimmerman

Maine Commission on Indigent Legal Services

Mills & Mills

Office of the Maine Attorney General

Shaheen & Gordon, P.A.

University of Maine School of Law

Unum

Appendices

Appendix A: Glossary of Acronyms

Appendix B: Charter

Appendix C: Notice of Opportunity for Public Comment on Adoption
of the Uniform Bar Examination

Appendix D: Written Public Comment

Appendix E: Motions and Corresponding Votes

APPENDIX A

GLOSSARY OF ACRONYMS

ABA – American Bar Association

CLE – Continuing Legal Education

LSAT – Law School Admission Test

MBBE – Maine Board of Bar Examiners

MBE – Multistate Bar Examination

MCILS - Maine Commission on Indigent Legal Services

MEE – Multistate Essay Examination

MPRE – Multistate Professional Responsibility Examination

MPT – Multistate Performance Test

MSBA – Maine State Bar Association

NCBE – National Conference of Bar Examiners

UBE – Uniform Bar Examination

UCC – Uniform Commercial Code

APPENDIX B

ADVISORY COMMISSION ON THE UNIFORM BAR EXAMINATION

Type:	Limited Term Commission
Established:	June 1, 2016
Chair:	Jennifer A. Archer, Esq.
Report Date:	November 18, 2016
Reports to:	Chief Justice
Completion Date:	December 30, 2016

I. Background

A substantial and number of jurisdictions have adopted the Uniform Bar Examination (UBE). These jurisdictions include a number of states in the northeast, including New Hampshire, Vermont, Connecticut, New York, and New Jersey. Additionally, the American Bar Association and the Conference of Chief Justices have enacted resolutions encouraging all states to adopt the UBE. Maine already uses some of the components of the UBE as part of its bar examination. Accordingly, this Commission is created by the Maine Supreme Judicial Court to consider the merits of adopting the UBE as a replacement for the current bar examination format so that Maine may benefit from the multijurisdictional benefits of the UBE and the portability of qualification for admission to the Maine bar.

II. Goals and Responsibilities

The Commission will study the merits of adopting the entire UBE into the bar admission process in Maine and the process for that integration. At a minimum, this will encompass consideration of the following issues:

- whether the UBE should be adopted in Maine;
- whether, if the UBE is adopted, the bar examination should include a Maine-specific component and, if so, what form it would take;
- the date when the UBE would first be administered in Maine, taking into account any lead time needed for law schools, students, and others affected by the adoption of the UBE;
- scoring standards that Maine would use in the grading process;
- whether and how data such as bar passage rates and admissions should be monitored;
- how long UBE scores may be used as a basis for admission to the Maine bar;
- any changes in fees that would result from use of the UBE; and

- what ongoing role Maine should seek with the UBE Committee of the National Conference of Bar Examiners, which prepares the UBE.

No later than November 18, 2016, the Commission shall issue a report to the Chief Justice containing its findings and recommendations.

III. Resources

The Commission may seek input, suggestions, and recommendations from individuals and groups outside of its membership. The Commission may invite consultants to its meeting as needed.

IV. Membership

The membership list is attached and may be modified at any time at the discretion of the Chief Justice.

V. Subcommittees and Voting

At the discretion of the Chair, the Commission may designate subcommittees to address specific issues and report back to the Commission. Subcommittees may invite additional input.

The Commission will work through consensus. All members of the Commission are voting members. Where consensus is not possible, a vote of the majority of the membership will be sufficient to include a recommendation in the report. A minority report may be included in the final report.

VI. Reporting

The Commission will report to the Chief Justice on or before November 18, 2016. When the Commission submits its report to the Chief Justice, the Commission shall also submit its report to the Maine Board of Bar Examiners, which then shall draft amendments to the Maine Bar Admission Rules that would implement the Commission's recommendations. The Board shall submit to the Court the draft amendments to the Rules on or before December 16, 2016.

VII. Meetings

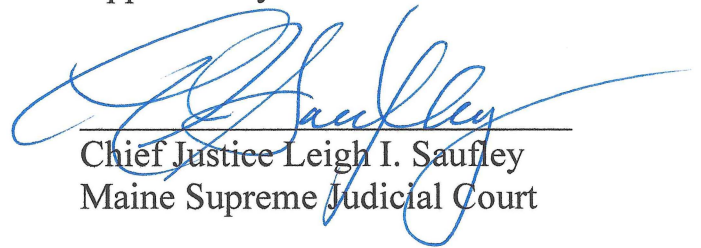
Meetings will be at the call of the Chair of the Commission, at times and places designated by the Chair. Meetings will be open to the public.

VIII. Commission Duration

Unless extended by further order of the Chief Justice, the Commission will cease to exist on December 30, 2016.

Dated: June 13, 2016

Approved by:



Chief Justice Leigh I. Saufley
Maine Supreme Judicial Court

ADVISORY COMMISSION ON UNIFORM BAR EXAMINATION MEMBERSHIP ROSTER

Jennifer A. Archer, Esq., Chair
E. James Burke, Esq., Maine Association of Criminal Defense Lawyers
Dean Danielle M. Conway, or designee, University of Maine School of Law
Ann M. Courtney, Esq., Board of Bar Examiners
Deborah Firestone, Esq., Executive Director, Board of Bar Examiners
Tracy Gorham, ADA, Maine Prosecutors Association
Thomas A. Knowlton, AAG, Office of the Maine Attorney General
Eleanor B. Maciag, Esq., Maine Commission on Indigent Legal Services
Linda D. McGill, Esq., Board of Bar Examiners
Paul H. Mills, Esq., Board of Bar Examiners
Jodi L. Nofsinger, Esq., Maine Trial Lawyers Association
Durward Parkinson, Esq., Maine State Bar Association
Elizabeth J. Scheffee, Esq., Maine State Bar Association
Laura Shortill, Esq., Maine State Bar Association
SJC Liaison, Associate Justice Jeffrey L. Hjelm

APPENDIX C

ADVISORY COMMISSION ON THE UNIFORM BAR EXAMINATION

NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT ON ADOPTION OF THE UNIFORM BAR EXAMINATION

Comments due on or before July 29, 2016

The Advisory Commission on the Uniform Bar Examination invites public comments to inform its findings and recommendations as to whether Maine should adopt the Uniform Bar Exam (“UBE”) and, if adopted, how the UBE should be integrated into Maine’s bar admission process.

I. The Advisory Commission

The Maine Supreme Judicial Court created the Advisory Commission on the Uniform Bar Examination to consider the merits of adopting the UBE as the format for the Maine bar examination. Because Maine already uses some of the components of the UBE as part of its bar examination, the Advisory Commission is focusing its study upon the integration of the entire UBE into the bar admission process in Maine.

The issues that the Advisory Commission will address include, but are not limited to: whether the UBE should be adopted in Maine; whether, if adopted, the bar examination should include a Maine-specific component and, if so, what form it would take; the date Maine should first administer the UBE, taking into account any lead time needed for law schools, students and others affected by the adoption of the UBE; scoring standards that Maine would use in the grading process; whether and how data such as bar passage rates and admissions should be monitored; how long UBE scores may be used as a basis for admission to the Maine bar; any changes in fees that would result from use of the UBE; and what ongoing role Maine should seek with the National Conference of Bar Examiners (“NCBE”), which prepares the UBE.

The Advisory Commission will issue a report to the Supreme Judicial Court setting forth its findings and recommendations in late 2016.

II. The Uniform Bar Examination

The UBE is a standardized test consisting of three examination components authored by the NCBE: the Multistate Bar Examination (“MBE”), the Multistate Essay Examination (“MEE”), and the Multistate Performance Test (“MPT”). The MBE is a multiple choice test consisting of 200 questions covering a broad range of topics, and is currently administered in 49 states and the District of Columbia. The MEE is comprised of six essay questions testing law of general application, and is currently administered in 30 states and the District of Columbia. The MPT includes two tasks designed to test practical lawyering skills, and is currently administered in 38 states and the District of Columbia. Jurisdictions that administer the UBE weight the MBE component 50%, the MEE component 30%, and the MPT component 20%. Individual jurisdictions control the passing score, which is out of a possible 400 points.

At this time, 24 jurisdictions have adopted the UBE. Seven of those jurisdictions also require a state-specific component as part of the bar admission process. Applicants who sit for the UBE receive a portable score that may be transferred to other UBE jurisdictions for a fixed period of time that is determined by the receiving jurisdiction. If the applicant’s score meets the minimum passing score set by the receiving UBE jurisdiction, the score may be accepted for the purpose of applying for admission in that jurisdiction. Although UBE scores are portable, applicants must still meet all of the admission requirements imposed by the jurisdiction where the person applies for admission, including, for example, minimum passing score, educational requirements, and character and fitness certification.

II. The Current Maine Bar Examination

The Maine bar examination consists of the MBE, one MPT task, and six essays drafted by the Board of Bar Examiners. By rule, the essays must test on the Maine Rules of Civil Procedure, the Maine Rules of Unified Criminal Procedure, the Maine Rules of Appellate Procedure, the Maine Rules of Professional Conduct, and the Maine Rules of Evidence. Additionally, there are a number of other potential essay topics that are identified in the Maine Bar Admission Rules. The essays and MPT are collectively weighted 7/11, and the MBE is weighted 4/11, with a passing score presently 138 out of a possible 200.

Applicants who have been in the active practice of law for three of the last five years, or who have taken the MBE in the previous 61 months may elect to sit only for the day of the Maine bar examination when the six essays and the MPT are administered. Further, those

applicants who have been in the active practice of law for three of the last five years who previously achieved an MBE score of at least 155 may choose to take only Questions 1 and 2 of the examination, which tests the Maine Rules of Civil, Criminal, and Appellate Procedure, Professional Conduct, and Evidence.

III. Request for Written Comment

Against this backdrop, the Advisory Commission invites written comments on adoption of the UBE in Maine and its integration into the current Maine bar admission process. Any comments must be submitted by **Friday, July 29, 2016, at 5:00 p.m.** The comments should be emailed to Jennifer Archer, Esq., Chair of the Advisory Commission, at jarcher@krz.com. Comments may be in the text of the email or in an attachment to the email. If the comments are in an attachment, the attachment must be a document in portable document format (.pdf). The Advisory Commission will acknowledge receipt of the email via reply email.

All comments must contain (1) the name, mailing address, telephone number and email address of the individual submitting the comments, and (2) the name, mailing address, and primary telephone number of the organization (if any) on whose behalf the comments are submitted. An individual need not be an attorney to submit comments either individually or on behalf of an organization.

Comments are public documents, and may be posted on the Court's website and included in the Commission's final report to the Court.

Dated: June 15, 2016

Jennifer A. Archer, Esq., Chair
Advisory Commission on the Uniform Bar Examination

APPENDIX D

From: davekov@gmail.com on behalf of [David Axel Kurtz](#)
To: [Jennifer Archer](#)
Subject: Comments on the UBE
Date: Wednesday, June 15, 2016 12:05:10 PM

Dear Ms. Archer:

Please accept my comments concerning the proposed adoption of the Uniform Bar Exam in Maine.

These comments are personal and unaffiliated with any business or organization.

I am a 2016 graduate of Maine Law & am in the midst of bar study. So I either have a great deal of standing, or absolutely none! Take it as you will.

I strongly urge that Maine adopt the UBE.

There are three reasons for this:

-1) It would provide significantly more opportunity to graduates of Maine Law. The most difficult decision of my last year of law school was whether to take the Maine bar or the UBE. I chose to take the Maine Bar, and despite my *great* desire to practice in Maine, I'm still not sure if I will be able to. I may well have wasted six months of my life on the hope of staying in Maine. This is a significant opportunity cost. It could be dispensed with. It should be.

-2) The vast majority of Maine's jurisprudence is identical to that of our sister states. This is already reflected by the fact that a significant amount of our bar exam is comprised of non-state-specific testing - the MBE, the MPT - and a not-insignificant amount of the "Maine Specific" portion of our bar has great overlap with majority law. Where Maine Law differs could be tested separately, as is done by most UBE states. I am not in a position to state with any authority that this is or is not necessary - but it seems reasonable on its face.

-3) This will move the United States towards national uniformity of attorney licensure. This will provide equality among lawyers, and clarity and certainty to their clients. (I'd write "our clients" but, jinx avoidance).

I do not believe this would in any way diminish the quality of legal representation available to Maine's citizens. If anything, it would enhance it. It certainly would not diminish it.

The only arguments against adopting the UBE which I can think of are protectionist in nature. While this might be some small service to Maine's lawyers, I think it is a great disservice to Mainers. This must be our one and only concern.

Furthermore, I would urge that the UBE be adopted as soon as is feasible. Probably next summer, so that those of us who fail the summer bar (again - no jinxing here!) be

given one more shot at the same format of bar exam before we need to realign our studying. However, if the UBE were introduced this winter, even if I were in a position of needing to take it, I would not complain.

I do not believe that Maine Law would require *any* time or resources in order to conform to this change. Of the 90 credits I took at Maine Law, not a single one was focused on Maine-specific law. Only three classes I took contained Maine-specific content *at all* - and then tokenistically, not substantively. Maine Law's faculty has stated *time and time again* that A) they do not teach for the bar, and B) they do not teach Maine-specific law. In short: if they complain about the UBE, I'm gonna stand up and shout ESTOPPEL.

The other questions of concern in your RFP, while no doubt important, are not of imminent import to me (!). I trust you and the Advisory Commission to make good choices on these matters.

Finally I would say that, in the few minutes since you released your RFP, the mood in the class Facebook page (our primary method of communication) has been - shall we say - jealous of those who will get to take the UBE instead.

Please let me know if you have any questions. Thank you very much for giving me the opportunity to contribute to this discussion.

--David Axel KURTZ

Juris Doctor - Class of 2016
University of Maine School of Law
david.kurtz@maine.edu

209 State Street - Apartment #7

Portland, ME 04101

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www.davekov.com

From: [Jon Johnson](#)
To: [Jennifer Archer](#)
Subject: comments on adoption of the UBE in Maine
Date: Tuesday, June 28, 2016 2:09:57 PM

Attorney Archer:

Maine should not adopt the Multistate Essay Examination portion of the Uniform Bar Exam.

The Maine specific portion of the bar exam enables the Board of Bar Examiners to assess an examinee's readiness to serve clients in Maine. Adopting a uniform essay exam would remove that capability.

I graduated from Maine Law in December 2014. I passed the February 2015 bar exam. My experience was that law school did not prepare me for the bar exam and did not prepare me for Maine specific practice. I participated in a bar exam preparation course that had a Maine specific sub course. My experience with the bar exam preparation course was that it prepared me for the MBE and the MPT, but much of the Maine specific information was incorrect. I resorted to research and self-study of Maine statutes and case law using the M. Bar Admission R. 10 (d)(1) as a guide.

The research and self-study prepared me for the essay portion of the bar exam and more importantly for Maine specific practice. Without the Maine specific essay portion of the bar exam, examinees will likely not study Maine specific law until after the bar examination and very likely never study Maine specific law with the intensity required for bar exam preparation.

Studying Maine specific law for the bar exam ingrained in me a basic level of Maine law knowledge, forced me to identify and use legal resources for the lawyers in Maine, and gave me confidence that I could begin practice in Maine.

Arguably, any law school graduate who passes the bar exam in any state should be capable of adapting to practice in Maine. However, without the Maine specific essay portion of the bar exam, the Board of Bar Examiners will not be able to assess the examinee's readiness to serve clients in Maine.

Maine should not adopt the Uniform Bar Exam.

Respectfully,
Jon Johnson, Esquire

(207) 745 2353

Johnson Law LLC
P. O. Box 633
Hampden, ME 04444

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From: [Pat Hunt, PEH, P.A.](#)
To: [Jennifer Archer](#)
Cc: [ARMSTRONG, DICK](#); [AYYAD, OMAR](#); [CONNELLY, PETER](#); [COREY, DANIEL](#); [EDWARDS, MELLISSA](#); [HALLETT, DON](#); [HATHAWAY, MCCRAE](#); [HATHAWAY, TIM](#); [HUNT, EILEEN](#); [MCGAUGHEY, RALPH](#); [MYKIETYN, JENN](#); [QUINLAN, ED](#); [QUINLAN, MICHAEL JOHN](#); [RIVERS, ROY](#); [ROACH, ARNOLD](#); [ROCKWELL, KAREN](#); [SAUCIER, TIM](#)
Subject: Re: Request for Comment on Uniform Bar Examination
Date: Tuesday, June 28, 2016 7:46:36 AM

Hi Jenn,

Just do everyone a favor and abolish the Bar examine.

It does nothing but cause anxiety, and makes the testing companies richer.

Just ask Hillary.

Pat

From: [Jennifer Archer](#)
Sent: Monday, June 27, 2016 2:40 PM
To: [jdcv@cliffordandgolden.com](#) ; [roncull@gwi.net](#) ; [wsmaddox@midcoast.com](#) ; [ezra@willeylawoffices.com](#) ; [jwmartinlaw@msn.com](#) ; [kmarasslaw@metrocast.net](#) ; [pathunt@fairpoint.net](#) ; [matthew.j.foster@maine.gov](#) ; [ajzlaw@roadrunner.com](#) ; [nhamlin@cwhmhayes.com](#) ; [sean.ociepka@belfastbaylaw.com](#) ; [dgoldman@nhdlaw.com](#) ; [dcarrillo@doylenelson.com](#) ; [pjk@kaynorlaw.com](#) ; [wwirick@conleyandwirick.com](#) ; [asclark@myfairpoint.net](#)
Subject: Request for Comment on Uniform Bar Examination

Good afternoon,

I am writing to you in my capacity as Chair of the Advisory Commission on the Uniform Bar Examination. Recently, the Advisory Commission posted a Notice of Opportunity for Comment on Adoption of the Uniform Bar Examination, inviting public comments to inform the Commission's recommendation as to whether Maine should adopt the Uniform Bar Examination (UBE) and, if adopted, how the UBE should be integrated into Maine's bar admission process. The text of the Notice may be found here:

http://www.courts.maine.gov/maine_courts/supreme/comment/ube_notice.html.

The Advisory Commission is eager to receive comment from the bar and wants the Notice to reach as many individuals and organizations as possible. As Presidents of your respective county bar associations, I hope that you will consider disseminating this Notice of Opportunity for Comment to your membership.

Thank you for your consideration and assistance.

Jennifer A. Archer, Esq.

Kelly, Rimmel & Zimmerman

53 Exchange Street
P.O. Box 597
Portland, Maine 04112-0597

Office Tel: (207) 775-1020
Direct Tel: (207) 420-3859
Fax: (207) 773-4895

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From: [Anna Geismar](#)
To: [Jennifer Archer](#)
Subject: Maine UBE Comment
Date: Friday, July 08, 2016 1:51:23 PM

Anna Neal
285 Woodhaven Dr
White River Junction, VT 05001
207-212-8906
anna.geismar@gmail.com

I believe it would be hugely beneficial for Maine to join the UBE. When a small area such as New England requires separate admission to each bar, it creates an incredible level of difficulty for those beginning, even continuing, a career practicing law. In addition, a law student cannot sit for both the Maine bar and the UBE as they are offered on the same day. A student would need to choose, and sit a second time for the bar six months later, which is an emotionally and financially draining endeavor. Reciprocity is an option, but not until five years after admission.

The level of commerce that could grow from the interstate practice of law is exponential. As a student graduating in 2018 from law school, I believe it would be a tremendous movement toward a better future if the great State of Maine joined the UBE.

From: [Tanna Whitman](#)
To: [Jennifer Archer](#)
Subject: Comments on adoption of UBE in Maine
Date: Wednesday, July 20, 2016 12:54:42 PM

Ms. Archer –

I wanted to make one comment on the issue of whether Maine should adopt use of the UBE. Please note, this is a personal comment, and not a comment made as a member of my law firm, or on behalf of any other organization.

My comment is made based on my experience as a military spouse who is also an attorney. The unemployment rate of military spouses has been a great concern to the military over the past few years (I received several surveys about it while my husband was active duty). Their unemployment rate is significantly higher than other groups measured. There are, of course, many reasons that military spouses have lower employment rates, including the need to be home with young children when one spouse is deployed, the relative financial security of military families including provisions for health insurance, etc. One of the major issues, however, is the frequent transfer of the active-duty spouse.

Moves every 1-3 years is the norm within the military. These moves are often quite sudden. While a move is easily anticipated, the location of the transfer is often not known until 2-3 months before the transfer is to take place. Thus, the spouse is left with very little time to find employment in the new location before a move (much less organize a move, find schools, doctors, churches, housing, etc.).

Once looking for employment, new challenges emerge. Employers are often reluctant to invest in an employee whose track record shows frequent employment changes. If the applicant indicates the reason for these changes is their status as a military spouse, the employer can be assured that they will only have this employee for some short period of time before another transfer comes along. While this is a challenge for all employment, it is more an issue for skilled professions. Employers simply do not wish to invest in training or taking on a new employee who they know will leave after only a year or two.

An added burden to a professional spouse, including lawyers, nurses, teachers, etc., is the new accreditation/licensing procedure that they must face for each new state. Not only would a transferring spouse have to find an employer willing to take them on for what is sure to be a short time, but also one who is willing to wait for licensing before they can perform all of their job duties. I myself took and passed 3 bar exams, Minnesota, Washington, and Maine, each at my own cost. The cost of keeping all three of these licenses active, including the various CLE requirements, was exorbitant. I eventually had to let both the MN and WA licenses lapse due to cost, only to have my husband transferred there. I was unable to reinstate my license due

to their rules and non-recognition of a portable exam score. This led me to accepting work as a paralegal for the time my husband was stationed there. I also worked for nearly a year as a paralegal in Maine before finding employment, finding my inability to assure them that I would be in the state for more than 2 years a roadblock.

Given these struggles, I highly endorse Maine adopting the UBE, so that a portable score can allow military spouses easier access to employment in this state. I do understand that there may always be additional state requirements that any attorney wishing to practice in the state will have to meet, but any reduction in the burden would be a significant help.

Please feel free to contact me with any questions about my position.

Tanna B. Whitman

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tannawhitman@ymail.com

From: [Martha Harris](#)
To: [Jennifer Archer](#)
Subject: Bar exam
Date: Thursday, July 21, 2016 8:05:36 AM

I think there is an advantage to having a multi-state exam which allows folks to practice in many states. However, I believe that we need to make certain that lawyers know our rules. Therefore, I am in favor of the current situation – or a hybrid where there would at least be testing on our rules. It seems unreasonable that someone would have to do 6 essays unrelated to Maine and then more essays etc. specifically related to this state.

However I respect the committee which has studied this issue and would accept their recommendation.

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From: [Jennifer Archer](#)
To: [Jennifer Archer](#)
Subject: Comment on Adoption of the Uniform Bar Examination
Date: Friday, July 29, 2016 3:15:59 PM
Attachments: [Maine Board of Bar Examiners Response to Request for Public Comment..pdf](#)

Attached please find the Maine Board of Bar Examiners' Comment on Adoption of the Uniform Bar Examination.

Jennifer A. Archer, Esq.

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To: Advisory Commission on the Uniform Bar Examination
From: Maine Board of Bar Examiners
Re: Notice of Opportunity for Public Comment on Adoption of the
Uniform Bar Examination
Date: July 29, 2016

The Maine Board of Bar Examiners (õMBBEö or õBoardö) submits this comment to the Advisory Commission on the Uniform Bar Examination to both inform the Commission about the current bar admissions process and to support a recommendation that the Maine Supreme Judicial Court adopt the Uniform Bar Examination (õUBEö).¹ This comment does not purport to address all possible issues that may arise in connection with integration of the UBE into the current Maine bar admission process but instead intends to highlight certain issues for the Commission's consideration.

I. The Maine Board of Bar Examiners

The Board is composed of nine members appointed by the Governor, seven of whom are licensed Maine attorneys and two of whom are public members.² Unlike some bar examiners across the country, the MBBE is a volunteer organization and its Board members are not paid any salary or stipend. The MBBE has a 3/4 time Executive Director and one part-time employee. In addition to drafting and administering the bar examination, the Board also considers requests for special testing accommodations and ensures that applicants possess satisfactory evidence of good character and fitness to practice law. As described below, the MBBE undertakes a substantial amount of work with its limited financial and staffing resources.

¹ This Comment is representative of the views of a majority of the MBBE. Four individuals, three of whom are new to the MBBE in the last year, reserve judgment on adoption of the UBE pending more information.

² 4 M.R.S. § 801.

II. The Current Maine Bar Admissions Process

The purpose of the bar admissions process is to protect the public by assessing whether an applicant possesses the minimum competence to practice law and ensuring an applicant's good character and fitness. Accordingly, applicants for admission to the Maine bar must produce satisfactory evidence of good character and fitness; attain a passing grade on the Multistate Professional Responsibility Examination ("MPRE")³; and either attain a passing grade on the bar examination or modified bar examination, or complete the requirements for reciprocal admission.⁴

A. Character and Fitness Review

All applicants must produce "satisfactory evidence of good character and fitness to practice law."⁵ The MBBE's character and fitness review process is very time-intensive. Adverse information on the application for admission to the bar first results in follow-up questions, requests for documentation, and a possible interview with a single Board member. If the Board doubts the applicant's good character and fitness after completing the first level of review, the Chair may appoint a three-member panel to conduct a further investigation and interview.⁶ Upon the review panel's determination that doubt remains concerning an applicant's good character, the Board must conduct a hearing to determine whether the applicant is of good character and fitness to practice law.⁷

B. Admission by Examination

Applicants who meet the educational requirements set forth in Maine Bar Admission Rule 10(c) are eligible to sit for the Maine bar examination. The Maine bar examination is a two-day, 12-hour examination, administered in February and July of each year. The first day of the examination consists of six 45-minute essay questions drafted by the Board's attorney members and one Multistate Performance Test ("MPT")⁸, drafted by and purchased

³ The MPRE is a two-hour, multiple-choice examination that is designed to measure an applicant's knowledge and understanding of the standards governing the professional conduct of lawyers. It is administered separately from the bar examination. Nat'l Conference of Bar Examiners, *Multistate Professional Responsibility Examination*, <http://ncbex.org/exams/mpre/> (last visited July 28, 2016).

⁴ M. Bar Admission R. 8-11A.

⁵ *Id.* 9(a).

⁶ *Id.* 9(c)(2). Under certain circumstances, the Chair may forego the designation of a three-member panel and proceed directly to a hearing. *Id.* 9(c)(1).

⁷ *Id.* 9(d).

⁸ Summaries of prior MPTs, including descriptions and source documents, are available online. See Nat'l Conference of Bar Examiners, *Multistate Performance Test*, www.ncbex.org/exams/mpt/preparing/ (last visited July 25, 2016).

from the National Conference of Bar Examiners (NCBE). The second day of the examination consists of the 200 multiple-choice-question Multistate Bar Examination (MBE)⁹, which is drafted by and purchased from the NCBE.

Applicants for the Maine bar who have been in the active practice of law for 3 of the last 5 years or have taken the MBE in the prior 61 months may elect to take only Day 1 (essay day) of the bar examination, which is known as the modified bar examination.¹⁰ Applicants may either use their prior MBE score or re-take the MBE and use the higher score. Further, applicants who previously achieved an MBE score of 155 or more may choose to take only Questions 1 & 2 of the Maine bar examination, which tests the Maine Rules of Civil, Criminal, and Appellate Procedure, Professional Conduct, and Evidence.¹¹

C. The Drafting and Grading Process

At the April and September MBE meetings, the Board chooses topics for the essay portion of the bar examination from a list of possible subjects in Maine Bar Admission Rule 10(d)(1). The only Maine-specific subjects that must be tested by the examination are the Maine Rules of Civil Procedure, the Maine Rules of Unified Criminal Procedure, the Maine Rules of Appellate Procedure, the Maine Rules of Evidence and the Maine Rules of Professional Conduct. The remaining 19 possible subjects available for testing are not required by the bar admission rules to be specific to Maine law but may instead involve application of general law.¹²

Question 1 of the bar examination always tests on the Maine Rules of Civil Procedure, the Maine Rules of Unified Criminal Procedure, and the Maine Rules of Appellate Procedure. This question is open book and applicants are provided with copies of the rules of procedure and a calendar in order to respond to questions asking the applicant to calculate filing deadlines. Question 2 always tests on a combination of the Maine Rules of Professional Conduct and Maine Rules of Evidence. The topics for Questions 3 through 6 are chosen from the list of subjects contained in Maine Bar Admission Rule 10(d)(1). Each essay question often tests on more than one subject. Question 7 is always a MPT, selected by the Board but drafted by the NCBE.

After topics are chosen, the Board's attorney members spend a substantial amount of time researching and drafting their assigned bar examination question and model answer. It is not unusual for the drafters to spend upwards of 25 hours researching and writing the first

⁹ National Conference of Bar Examiners, *Multistate Bar Examination*, www.ncbex.org/exams/mbe/preparing/ (last visited July 27, 2016).

¹⁰ M. Bar Admission R. 10(e)(1).

¹¹ *Id.* 10(e)(2).

¹² *Id.* 10(d)(1).

draft. After the draft essay question and answer is reviewed and edited by another attorney member, it is circulated to the entire Board. Hours are spent at the June and February Board meetings to review and edit the draft questions. The assigned attorney then revises the draft essay question, consistent with the comments from the entire Board. One more cycle of review is completed by an attorney member before the question is finalized for administration at the bar examination.

Following administration of the bar examination, the attorney members immediately start grading their individual questions. Some attorney members hire a grader and some attorney members grade their assigned exam question themselves. Those who hire a grader meet with that individual, discuss the question and answer, and grade the first 10 or 20 questions together to ensure consistency in grading. Once grading is complete, the essay scores are scaled by NCBE to the MBE, with a weight of 7/11 assigned collectively to the essays and MPT and a weight of 4/11 assigned to the MBE.¹³ Currently, applicants who achieve at least 138 points out of 200 pass the Maine bar examination and are eligible for admission.

D. Admission by Motion

An attorney admitted in another U.S. jurisdiction may be admitted without taking the bar examination if the applicant is an active member in good standing of another jurisdiction that has reciprocity with Maine.¹⁴ An applicant for admission on motion must present evidence that he or she has been engaged in the active practice of law in New Hampshire or Vermont for the last 3 years or has been engaged in the active practice of law in another U.S. jurisdiction for 5 of the last 7 years, meets the educational requirements, has passed the MPRE, possesses good character and fitness, and has completed 15 hours of continuing legal education on Maine practice and procedure within one year prior to admission.¹⁵

III. Specific Issues to Consider in Adopting the UBE

The UBE is comprised of three assessment tools: the Multistate Essay Exam (MEE) and two MPTs, which are administered on the Tuesday of each test administration, and the MBE, which is administered on the Wednesday of each test administration. UBE jurisdictions continue to retain control over eligibility requirements for admission, MEE and MPT grading, the passing score, and the transfer period of UBE scores. Significantly, UBE jurisdictions also retain all control over character and fitness determinations.

Maine currently administers one MPT and the MBE. The key differences between the current Maine bar examination and the UBE, therefore, are concentrated in the adoption

¹³ *Id.* 10(g).

¹⁴ *Id.* 11A(a).

¹⁵ *Id.*

and weighting of the MEE.

A. Dual-Admission Applicants

Currently, applicants may sit concurrently for the Maine and Massachusetts bar examinations because Maine administers its essays on Tuesday, Massachusetts administers its essays on Thursday, and both jurisdictions administer the MBE on Wednesday. Massachusetts recently adopted the UBE, however.¹⁶ Starting in July 2018, Massachusetts examination schedule will no longer coordinate with Maine because Massachusetts will no longer administer essays on Thursday. It will instead follow the UBE schedule, which requires that the MEE and MPT be given on Tuesday and the MBE be given on Wednesday. Applicants will then be forced to choose between taking the UBE, which provides them a portable score for potential use in many jurisdictions, and taking the Maine bar examination, which does not provide a portable score and potentially limits applicants' job possibilities. It is possible that this will result in decreased bar admission numbers in Maine, which could exacerbate the access to justice problem that already exists in this State.

B. The Multistate Essay Exam

Although there appears to be significant overlap between the MEE subject matter and the subject matter tested by the Maine essays,¹⁷ the MEE tests only law of general applicability whereas the Maine Bar Admission Rules require that a portion of the bar examination test on the Maine rules of procedure, professional conduct, and ethics.

It would not be surprising if the Commission harbors concern that the UBE tests upon general law rather than Maine-specific content. However, it bears emphasis that the purpose of the bar examination is to protect the public by ensuring that a candidate for admission possesses the minimum competence necessary to practice of law. Although the MBE exerts extensive effort throughout the essay drafting and review process, the drafters are practicing attorneys who are limited by time and training. They are not professional bar exam drafters and, other than a conference attended by several of the longer-serving board members, have no specific training in drafting a bar examination question. Further, unlike the NCBE, the MBE has no assessment tools or the capacity to determine whether the overall scores achieved from the current Maine essays reflect a true measurement of minimum competence to practice law.

By contrast, the NCBE has spent years studying its assessment tools and there is now little question that the MEEs satisfy the overall purpose of the bar examination. The NCBE subjects its MEEs to a rigorous drafting and review process. Preparation of any given MEE

¹⁶ See Massachusetts Court System, *Notice: Adoption of Uniform Bar Examination*, <http://www.mass.gov/courts/court-info/sjc/notice-adoption-of-uniform-bar-examination.html> (last visited July 25, 2016).

¹⁷ Compare M. Bar Admission R. 10(d)(1), with Nat'l Conference of Bar Examiners, *Multistate Essay Examination*, www.ncbex.org/exams/mee/preparing/ (last visited July 11, 2016).

item takes approximately 2 ½ years, involving committees consisting of NCBE staff, subject matter experts, and pre-testers.¹⁸

C. Weighting of the UBE Components

Weighting of the bar examination components affects the overall reliability of the exam. The Maine Bar Admission Rules require that the MBE be weighted 4/11 and the essays and MPT collectively be weighted 7/11, whereas the UBE weights the MBE 50% and the MEE and MPT collectively 50%. Although Maine has attempted to ensure that its essay scores are reliable by scaling to the MBE, it does not weight the MBE at the recommended 50%.¹⁹ It is therefore unclear whether the current scaling process achieves the desired result of ensuring reliability of the Maine bar examination. Adopting the UBE approach would represent significant progress toward ensuring reliability of the Maine bar examination.

D. Interaction Between the UBE Transfer Period, the Modified Bar Examination, and Admission on Motion

The UBE provides a portable score that may be transferred to another UBE jurisdiction. Score portability relieves a substantial financial burden on applicants who wish to sit for multiple bar examinations. It also facilitates lawyer mobility, which is particularly important for recent law school graduates as the legal profession continues to change and trend toward multijurisdictional practice. In adopting the UBE, other jurisdictions have noted that score portability may also benefit the public by increasing legal resources in underserved areas.²⁰

In order to transfer his or her score, the applicant must meet all of the receiving jurisdiction's requirements, including education, passing score, and character and fitness. Each jurisdiction may determine its own period for acceptance of UBE scores earned in other jurisdictions. While the transfer period ranges in other jurisdictions from 2 years to 5 years, it appears that most jurisdictions have adopted a 3-year transfer period.²¹

¹⁸ Judith A. Gundersen, *MEE and MPT Test Development: A Walk-through from First Draft to Administration*, 84(2) THE BAR EXAMINER 29 (June 2015), <http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FUploads%2F840215-Gundersen.pdf>.

¹⁹ See Susan M. Case, Ph.D., *Back to Basic Principles: Validity and Reliability*, 75(3) THE BAR EXAMINER 23 (Aug. 2006), http://www.ncbex.org/assets/media_files/BarExaminer/articles/2006/750306_testing.pdf (explaining validity, reliability, and the relationship between essays and the MBE).

²⁰ See, e.g., The Advisory Committee on the Uniform Bar Examination, *Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals* (N.Y. April 2015) at 40, http://www.courts.state.ny.us/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf (last visited July 25, 2016).

²¹ See Nat'l Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 2016*, at 44 (2016) <http://www.ncbex.org/pubs/bar-admissions-guide/2016/index.html#p=1> (last visited July 29, 2016).

As noted above, the Maine Bar Admission Rules currently permit practicing attorneys to take either a modified bar examination or seek admission on motion, depending upon the length of the attorney's active practice of law. In the event that Maine adopts the UBE, the Commission should consider whether these rules need to be amended. The MBBE suggests that Maine accept a transferred UBE score for a period of up to 3 years, upon payment of the same fee associated with admission on motion. It also suggests that the admission on motion rule be amended to permit reciprocal admission of attorneys that have been in the active practice of law for 3 of the last 5 years, consistent with the recommendation of the ABA Commission on Ethics 20/20.²² The combination of a UBE transferable score and revision to the admission on motion rule would then make the modified bar examination superfluous and, accordingly, it should be eliminated.

IV. Local Law Component

The MBBE supports the addition of a Maine-specific component, but makes no recommendation as to timing (pre- or post-admission), type of tool (examination or continuing legal education seminar), or format (electronic/online, live, or video). However, the MBBE does encourage the Commission to consider the following issues in its analysis:

- (1) MBBE's limited financial and staffing resources in implementing and maintaining any pre-admission examination or continuing legal education seminar;
- (2) Whether requiring individuals to travel to Maine to sit for an additional, written Maine-specific test or live CLE undermines the UBE's portability feature;
- (3) Whether it is necessary to test on the Maine rules of procedure, ethics and evidence in order to ensure that an applicant possesses the minimum competence to practice law, considering that many attorneys do not litigate, Maine's procedural rules are very similar to the federal rules, Maine's ethics rules have been recently updated to be more in tune with model rules, and applicants for admission to the Maine bar must sit for and pass the MPRE, the purpose of which is to measure examinees' knowledge and understanding of established standards related to the professional conduct of lawyers²³ and is based upon the Model Rules of Professional Conduct.

²² Am. Bar Ass'n, Comm'n on Ethics 20/20, *Report to the House of Delegates* (2012), www.americanbar.org/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_resolution_and_report_admission_by_motion_posting.authcheckdam.pdf.

²³ Nat'l Conference of Bar Examiners, *Multistate Professional Responsibility Examination*, <http://www.ncbex.org/exams/mpre/preparing/> (last visited July 13, 2016).

From: [Sebastian Okun](#)
To: [Jennifer Archer](#)
Cc: [Tara Rich](#)
Subject: UBE - Public Comment
Date: Friday, July 29, 2016 1:08:50 PM
Attachments: [image001.jpg](#)
[NLS - UBE Statement.pdf](#)

Dear Ms. Archer,

On behalf of the New Lawyers Section of the MSBA, attached please find comments regarding Maine's proposed adoption of the Uniform Bar Exam.

Thanks for your time. Please let me know if you have any questions.

Very truly yours,

Sebastian Okun

Sebastian B. Okun, Esq.
Associate



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July 29, 2016

Jennifer A. Archer, Esq., Chair
Advisory Commission on the Uniform Bar Examination

RE: *Proposed Adoption of the Uniform Bar Examination*

Dear Ms. Archer:

On behalf of the New Lawyers Section of the Maine State Bar Association, I submit the following comments regarding the proposed adoption of the Uniform Bar Examination (“UBE”) by the State of Maine.

As attorneys recently admitted to the Bar, members of the New Lawyers Section have the struggles of the Bar Exam and an initial job search relatively fresh in our minds. As such, I believe we are in a uniquely strong position to offer comment on this issue. We have also received feedback on this issue from current law students at Maine Law and their opinions are incorporated below.

After careful consideration and discussion, the New Lawyers Section strongly supports the adoption of the UBE in Maine. The portability of practice enabled by the UBE would both allow new Maine attorneys the freedom to utilize their skills in wide variety of national markets as well as provide Maine residents with the benefits offered by the experience and diversity of out of state attorneys who wish to practice here. We believe that the protectionist concerns of opening Maine to a potential influx of attorneys from other jurisdictions, and thereby increasing competition for in-state jobs, are outweighed by the benefits afforded by the UBE. Ultimately, the nationalization represented by the UBE will increase Maine residents’ access to quality legal representation and provide significant opportunities to new Maine lawyers.

Thank you for your time and attention.

Very truly yours,

/s/ Sebastian Okun

Sebastian B. Okun, Esq.
Peter Thompson & Associates
43 US Route 1
Falmouth, Maine 04105
207-874-0909

On behalf of:

MSBA New Lawyers Section
Attn: Tara Rich, NLS Chair &
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From: [Alexander Price](#)
To: [Jennifer Archer](#)
Subject: Uniform Bar Exam - Comment by the Student Bar Association
Date: Friday, July 29, 2016 4:13:27 PM
Attachments: [Uniform Bar Exam comment - Student Bar Association.pdf](#)

Hi Jennifer Archer,

My name is Alexander Price, and I am the President of the Student Bar Association. The SBA would like to submit a comment on the UBE on behalf of the student body of the University of Maine School of Law. I have attached our comment below.

If you have any questions, please do not hesitate to email me at alexander.price@maine.edu.

Thanks,
Alex

--

Alexander Price
Juris Doctor Candidate, Class of 2017
University of Maine School of Law
SBA President

Dear Advisory Commission on the Uniform Bar Exam,

The members of the Student Bar Association (SBA), on behalf of the student body of the University of Maine School of Law, write to voice our support for the Uniform Bar Exam (UBE) as the format for the Maine bar examination.

The SBA recently polled students and faculty on whether they were in favor of, or opposed to, adopting the UBE in Maine. The response the SBA received was overwhelmingly in favor of adopting the UBE.

Many of our students believe the Uniform Bar Exam promises greater reciprocity, allowing Maine students to have more choice in terms of where they practice, and less expense in making that choice as those students will have to take fewer exams. Further, those students believe that the Uniform Bar Exam will also help to attract out-of-state residents, which is good for enrollment and tuition, as well as diversity of viewpoints.

Other students believe the UBE will give the University of Maine School of Law additional data with respect to comparisons in performance. This will allow the school to see how our students compare to those around the country, and then use this data to make changes to correspond with its findings.

While the responses were mostly positive, we did have some students that expressed reservations about adopting the Uniform Bar Exam in Maine. Many of those students believe that the 'reciprocity' argument is great in theory, but may not work out perfectly in reality. Those students believe that the Uniform Bar Exam could make it easier for out-of-state lawyers to come to Maine and take jobs from University of Maine School of Law students; jobs that our students are already having a hard time acquiring.

With that being said, the members of the Student Bar Association, on behalf of the student body of the University of Maine School of Law, would voice our support for the UBE as the format for the Maine bar examination.

Thank you for your consideration.

Sincerely,

Members of the Student Bar Association

From: [Bradley Sica](#)
To: [Jennifer Archer](#)
Subject: Comment on the UBE
Date: Friday, July 29, 2016 4:57:45 PM
Attachments: [Comment on the UBE.pdf](#)

Dear Attorney Archer:

I have attached my comment on the UBE to this e-mail.

Sincerely,

Bradley P. Sica, Jr.

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Canton, ME 04221-3022
(207) 891-9683
bradley.sica@gmail.com

July 29, 2016

Advisory Commission on the Uniform Bar Examination

Dear Advisory Commission:

As an attorney admitted to practice in New Hampshire and the U.S. District Court for the District of New Hampshire who graduated from the University of Maine School of Law, I would urge Maine to adopt the Uniform Bar Examination (hereinafter referred to as, "the UBE"). Based on personal experience, I know that Maine's adoption of the UBE would incentivize Maine law students to take the bar exam in this state as opposed to traveling to a state like New Hampshire to sit for the bar exam. If Maine wants to stem the flow of young adults leaving the state, diversify the age demographics of its attorneys, welcome people from other parts of the country to sit for the bar exam, provide Maine law graduates with more employment options around the country, and ensure that new Maine attorneys could find employment in another state if the need arose, then it should adopt the UBE.

When I was preparing to graduate from the University of Maine School of Law, I had to choose whether to sit for the Maine Bar Exam or the New Hampshire Bar Exam. New Hampshire uses the UBE while Maine does not use this exam. Because the exams were offered on the same day, I could not take both bar exams. Consequently, I had to weigh my options. If I sat for the Maine Bar Exam, I would only be admitted to practice in Maine unless I sat for another state's bar exam or satisfied another state's requirements for bar admission without examination in the future. On the other hand, if I sat for the New Hampshire Bar Exam, I would have a test score that I could transfer to several states. As a result, I could apply to job postings for attorneys in other states with greater ease. Because I wanted my job opportunities to be as broad as possible at the beginning of my legal career, I took the New Hampshire Bar Exam. If more law students and graduates from the University of Maine School of Law discovered the benefits of sitting for the New Hampshire Bar Exam when juxtaposed with sitting for the Maine Bar Exam in its present form, I envision additional graduates choosing to take the New Hampshire Bar Exam.

Through my experience of taking the New Hampshire Bar Exam, I had the opportunity to meet people who went to law school in North Carolina and New York. If Maine were to adopt the Uniform Bar Exam, there is a possibility that Maine would see more test-takers from different states sitting for the Maine Bar Exam depending on the fees that the Maine Board of Bar Examiners charges for those taking the exam as contrasted with other states.

I would also observe that if Maine adopts the UBE, it would be easier for attorneys to practice in both Maine and New Hampshire at the beginning of their legal careers as opposed to waiting three years. This would probably be a welcomed development for those attorneys working close to Maine's border with New Hampshire.

Maine has a choice of either having an open or closed bar admissions system. Maine can facilitate the migration of attorneys coming into the state and moving out of the state, or Maine can choose to maintain its bar admission requirements in their present form which will make Maine a less attractive place for attorneys to relocate in the future if more states choose to join the UBE. Furthermore, Maine's adoption of the UBE will allow test-takers to be more flexible in finding employment in response to the United States job market.

Therefore, I urge Maine to adopt the Uniform Bar Examination to ensure that Maine graduates continue to take the Maine Bar Exam, promote diversity among test-takers, encourage the free flow of attorneys to Maine and from Maine, and assist test-takers in securing positions where there are employment opportunities.

Sincerely,

Bradley P. Sica, Jr.

APPENDIX E

Motions and Corresponding Votes

Motion 1: Recommend that the Maine Supreme Judicial Court adopt the Uniform Bar Examination.

In Favor

Jennifer A. Archer
E. James Burke
Danielle M. Conway
Ann M. Courtney
Laura Shortill Curtis
Deborah Firestone
Tracy Gorham
Eleanor B. Maciag
Linda D. McGill
Jodi L. Nofsinger
Elizabeth J. Scheffee

Opposed

Thomas A. Knowlton*
Paul H. Mills

* Attorney Knowlton would not support adoption of the UBE without a corresponding pre-admission, jurisdiction-specific component.

Motion 2: Recommend that the Maine Supreme Judicial Court adopt a pre-admission, jurisdiction-specific component.

In Favor

Danielle M. Conway
Laura Shortill Curtis
Paul H. Mills
Thomas A. Knowlton
Jodi L. Nofsinger

Opposed

Jennifer A. Archer
E. James Burke
Ann M. Courtney
Deborah Firestone
Tracy Gorham
Eleanor B. Maciag
Linda D. McGill
Elizabeth J. Scheffee

Motion 3: In the event that the Maine Supreme Judicial Court deems it advisable to include a jurisdiction-specific component, recommend amending Maine Bar Rule 5 to require that attorneys take 11 CLE credit hours specifically on Maine law during their first year of practice.

In Favor

Jennifer A. Archer
E. James Burke, Esq.
Danielle M. Conway
Ann M. Courtney
Laura Shortill Curtis
Deborah Firestone
Tracy Gorham
Thomas A. Knowlton
Eleanor B. Maciag
Linda D. McGill
Paul H. Mills
Jodi L. Nofsinger
Elizabeth J. Scheffee

Opposed

None